(24,696)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 121.

JOHN ARMSTRONG CHALONER, PLAINTIFF IN ERROR,

vs.

THOMAS T. SHERMAN.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 31, 1916.

a United States Circuit Court of Appeals for the Secon Circuit.

JOHN ARMSTRONG CHALONER, Plaintiff in Error (Plaintiff Below),
against
THOMAS T. SHERMAN, Defendant in Error (Defendant Below),

Orig.

TRANSCRIPT OF RECORD.

Error to the District Court of the United States for the Southern District of New York.

1 *Stipulation as to Papers to be Printed in Transcript.*

United States District Court, Southern District of New York.

JOHN ARMSTRONG CHALONER, Plaintiff,
against
THOMAS T. SHERMAN, Defendant.

Pursuant to the rules of this Court, it is hereby stipulated that the following papers only of the papers on file in this action with the Clerk of said Court need be certified to the United States Circuit Court of Appeals for the Second Circuit as constituting the transcript of record to be filed with said Court on the appeal thereto taken by the plaintiff, by writ of error from the judgment entered herein on March 6, 1912.

1. Summons and complaint (filed August 16, 1904).
2. Answer (filed November 29, 1904).
3. Order amending title as to plaintiff's name (filed October 18, 1909).
4. Judgment (filed March 6, 1912).

2 5. Plaintiff's assignments of error (filed July 9, 1912).

6. Plaintiff's writ of error and order allowing the same (filed July 9, 1912).
7. Plaintiff's bill of exceptions and exhibits (filed October 16th, 1913).
8. Citation on appeal (filed July 9, 1912).
9. Stipulations as to exhibits (to be filed).
10. This stipulation.

Dated, New York, October 20th, 1913.

WILLIAM D. REED,
Attorney for Plaintiff.
EVARTS, CHOATE & SHERMAN,
Attorneys for Defendant.

3 *Summons.*

United States Circuit Court, Southern District of New York.

JOHN ARMSTRONG CHANLER
against
THOMAS T. SHERMAN.

To the above named Defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, at the Borough of Manhattan, in the City of New York, this 5th day of April in the year 1904.

JOHN A. SHIELDS, *Clerk.*

OSBORNE & HESS,
Plaintiff's Attorneys.

Office and P. O. Address, 27 William Street, Borough of Manhattan, New York City.

4 *Complaint.*

United States Circuit Court for the Southern District of New York.

JOHN ARMSTRONG CHANLER, Plaintiff,
against
THOMAS T. SHERMAN, Defendant.

The plaintiff, by Leo G. Rosenblatt, his attorney, complaining of the above named defendant, alleges:

I. That plaintiff is and at all times herein referred to was, a citizen of the State of Virginia, a resident of Cobham, in the County of Albermarle in said State, and a person of full age, sane mind and competent to manage his person, estate and affairs.

II. That defendant is, and ever since November 1, 1901, has been, a citizen of and resident of the State of New York.

III. That on or about November 6, 1901, a petition was presented to the County Court of the aforesaid County of Albemarle, in the State of Virginia, praying for an investigation into plaintiff's sanity, with a view towards ascertaining whether a committee should be appointed of his person and estate, and the said Court, after hearing and considering the evidence, duly determined and adjudged the plaintiff to be of sound mind and capable of managing his
5 person and estate, and made and caused to be entered in the office of the Clerk of said Court an order, bearing date No-

vember 6, 1901, dismissing the said petition and adjudging the plaintiff to be sane and competent to manage himself and his estate, and said order has never been vacated, reversed or in any particular modified.

IV. That heretofore, at various times prior to the commencement of this action, and since November 6, 1901, the above named defendant, falsely and wrongfully claiming to be thereunto authorized by virtue of an alleged appointment as committee of the person and estate of the plaintiff in and for the State of New York, did unlawfully take, collect, have and receive for the use of this plaintiff, but without the consent or authority of the plaintiff, divers sums of money, chattels and negotiable securities, the exact nature and amount whereof are well known to the defendant, but not accurately known to this plaintiff, but which include, among other things, the following moneys and property, to wit:

(*a*) All the rents and income of and derived from plaintiff's real estate situated in the State of New York, such rents and income, collected and received by the defendant as aforesaid, amounting in the aggregate to more than thirty-three thousand seven hundred and ninety-four 48/100 dollars.

(*b*) The sum of two thousand one hundred and seventy-nine 55/100 dollars in money received by the defendant from one Prescott Hall Butler on or about November 25, 1901, being money belonging to this plaintiff, but which the said Butler falsely, wrongfully
6 and unlawfully withheld from the plaintiff and claimed to have and to hold as a committee of the person and estate of the plaintiff.

(*c*) Divers sums of money, aggregating not less than thirteen thousand and eighty 15/100 dollars, being the income or issue of certain trust funds held and administered under the provisions of the last will and testament of John Winthrop Chanler, deceased, by Trustees therein named, and which income and issues were payable to the plaintiff as beneficiary of certain trusts in and by said last will and testament created for his benefit; the said Trustees having been induced by the defendant to pay over to him the said income and issues of said trust funds by the defendant's false and wrongful pretenses and representations that the defendant had been lawfully appointed a committee of the estate of the plaintiff, and was authorized as such committee to collect and receive such moneys on behalf and for the use of the plaintiff.

(*d*) The aggregate sum of not less than nineteen thousand five hundred and forty-one 47/100 dollars in money, being the proceeds and income of certain testamentary bequests and trusts made and created for the benefit of the plaintiff in, by and under the last will and testament of Laura A. Delano, deceased, which proceeds and income were payable under the provisions of said will to this plaintiff, but were in fact paid over to the said defendant by the Executors or Trustees of and under said last will and testament of Laura A. Delano, deceased, by reason and as the result of and in re-
7 liance upon the false and wrongful pretenses and representations of the defendant to the said Executors and Trustees,

that he, the said defendant, had been lawfully appointed and was a committee of the person and estate of the plaintiff, and as such committee was authorized to collect and receive said proceeds and income on behalf and for the use of the plaintiff.

(*e*) Divers negotiable securities and certificates of stock, being evidence of and representing the investments and interests of the plaintiff as a shareholder of the capital stock of certain business corporations, known respectively as The Self-Threading Sewing Machine Company of New York, The United Industrial Company, The Roanoke Rapids Power Company, which said securities and certificates were at all times herein mentioned, and are of the par and face value of two hundred and eighteen thousand, two hundred dollars; and the plaintiff is informed and verily believes that the actual value thereof then was and is not less than one hundred and fifty thousand dollars.

(*f*) Divers other sums of money and chattels, including household furniture, silverware, pictures and personal effects belonging to this plaintiff, and which are mentioned and described in the inventory and account hereinafter referred to, and including also the rents, income, issue and profits of the real and personal estate of the plaintiff, which the said defendant has collected and received since December 1, 1903, the date of said inventory and account, and of the verification thereof; and the plaintiff is informed and
8 believes that the total value of such divers other moneys and chattels is not less than the sum of twenty-five thousand dollars.

V. That on or about December 1, 1903, the defendant made and verified under his oath and caused to be filed in the office of the Clerk of the County of New York, in said State of New York, a certain written instrument or schedule containing, among other things, an inventory and account of the moneys and property of the plaintiff which he, the said defendant, claimed and admitted and still claims to have received and collected in his alleged character and capacity as a committee of the plaintiff's estate prior to the date of said verification; that for greater particularity concerning the money, chattels and security referred to as money and property of the plaintiff taken, collected, had and received by the defendant, the plaintiff begs leave to refer to the said sworn inventory and account of the defendant and all the foregoing allegations refer and are intended to refer to all money, tangible property and negotiable securities and choses in action which, prior to the commencement of this action the defendant, under color, claim or pretense of authority to act as a committee of the estate of the plaintiff, took into his possession and under his control, whether such taking, receipt or collection was prior or subsequent to the date of the making, verification and filing of the said inventory; this plaintiff being unable to state the exact nature or value of said money and chattels with greater certainty or particularity, because the defendant and the above-named Prescott Hall Butler as his predecessor in said pretended office as alleged committee have, ever since their pretended appointment as
9 such committee, refused to recognize or treat this plaintiff as a sane and competent person, and plaintiff has been and is

deprived of access to the sources of more accurate information and depended entirely upon the defendant himself for further and particular information concerning the nature, condition and value of the plaintiff's real and personal estate.

VI. That the defendant obtained, took, collected, had and received, ostensibly for the use and on behalf of this plaintiff, all of the aforesaid money, chattels and negotiable securities and choses in action, by falsely claiming, pretending and representing that he was duly and lawfully authorized and empowered so to do by virtue of an alleged order of the Supreme Court of the State of New York, bearing date November 19, 1901, and entered and filed on the same day in the office of the Clerk of the County of New York in said state, whereas the fact was and is that said order was made and entered without any notice whatsoever to this plaintiff and solely upon the petition of Prescott Hall Butler, and the written consent of the defendant, such petition and consent bearing even date with the said order; that the said alleged order of November 19, 1901, was and is absolutely null and void; that said Supreme Court of New York, at the time of making said order, had no jurisdiction either of the person or over the property of this plaintiff sufficient to justify, warrant or authorize the making of the said order of November 19, 1901, or of any order whatsoever appointing a committee either of the person or of the estate of the plaintiff.

VII. That said order of November 19, 1901, purported on
10 its face to be an order appointing the defendant a committee of the person and estate of the plaintiff to succeed the above-named Prescott Hall Butler, whose resignation as such committee was simultaneously accepted in and by the same order; that said Butler, in whose place and stead the said defendant was thus intended to be appointed, claimed and pretended to have been appointed as such committee in and by a previous order of the same Court, bearing date, filed and entered June 23, 1899; that said order of June 23, 1899, however, was likewise absolutely null and void and was made and entered without lawful or reasonable opportunity to plaintiff to appear or to be heard, and the said Supreme Court of New York, at the time of making the same, had no jurisdiction of the person or estate of the plaintiff sufficient to justify, authorize or warrant the making of said order or any order appointing a committee of plaintiff's person or estate; that the proceedings recited in the said order of June 23, 1899, upon which depended the validity of said order and of the subsequent order of November 19, 1901, was absolutely null and void and in nowise binding upon this plaintiff and were insufficient to give to the Supreme Court of the State of New York jurisdiction either of the person or of the estate of this plaintiff, or jurisdiction to adjudge this plaintiff, an incompetent person, either as provided in the statutes of the State of New York, or otherwise; and that in so far as the said statutes of the State of New York authorized, directed or sanctioned the said proceedings as a basis for the making of either of said orders by said Supreme Court, or authorized the said Supreme Court to adjudge this
11 plaintiff an incompetent person or to sequester his property, or to appoint a committee of his person and estate or of either,

as a result of such proceedings, the said statutes were and are repugnant to and in contravention of the Constitutions of the State of New York and of the United States of America, and are absolutely illegal and void.

VIII. That the proceedings recited in said order of June 23, 1899, as justification therefor, and as foundation thereof, being the only proceedings on which the said Supreme Court, in the making of said order, claimed or could claim to exercise jurisdiction of the person or estate of this plaintiff, were instituted, prosecuted and determined without lawful or reasonable opportunity to plaintiff to appear or to be heard and therefore without lawful or reasonable notice to this plaintiff and constituted an attempt and tended to deprive plaintiff of his liberty and property without due process of law, and were so instituted, prosecuted and determined at the time and during a period when this plaintiff, by virtue and under color of an illegal order of said Supreme Court, and with full knowledge, consent and connivance of such Court and its officers and agents, and of the parties who instituted said proceedings, was unlawfully and falsely restrained and imprisoned in a certain prison house, popularly known as Bloomingdale Asylum, at White Plains, in the County of Westchester, in said State of New York, said asylum being a private institution, owned and conducted by a private corporation, and said plaintiff, as an inmate and prisoner in said asylum, was unlawfully and forcibly detained and kept in the custody and charge
of the superintendent of said asylum, acting as the agent of
12 said private corporation; and during the pendency of the said proceedings in said Supreme Court of New York this plaintiff was at all times under duress of imprisonment and absolutely subject to the orders and control of said corporation, or of its superintendent, and at no time during the pendency of said proceedings was the plaintiff free to appear, either personally or by counsel, before the said Supreme Court or any officer or officers thereof, or any commissioner, commissioners or jury thereof, without the consent and direction of the said superintendent of said asylum, except upon the order of said Supreme Court, and no such direction was given by said superintendent, nor was any such order of said Supreme Court made or given by said Supreme Court and in and during the entire proceedings this plaintiff, with the knowledge, consent and co-operation of said Supreme Court, and its judges, commissioners or agents, was forcibly, wrongfully, unlawfully and in violation and defiance of his constitutional rights and privileges, deprived of the power and opportunity to act, write or speak freely, and to freely communicate or consult with counsel or to appear or attend before the said Supreme Court or before its commissioners or jury, or to confront the parties who had instituted and prosecuted the said proceedings in said Supreme Court, and had therein charged the plaintiff with lunacy and incompetency, or to ascertain the nature of the charges made against him, or to hear the testimony offered in support thereof, or to cross-examine the witnesses hired and produced by the petitioners therein to give such testimony; and at no time, either preliminary to or during the pendency of

said proceedings, was the plaintiff personally inspected, interviewed, examined or in anywise communicated with by any of the
13 judges or officers of the said Supreme Court, or by any of the commissioners or any of the jury to whom the said Supreme Court in the course of said proceedings, delegated the function of inquiring whether or not this plaintiff was sane and competent; and that, by reason of the premises, the said proceedings in the said court were, and each and every step therein was, unlawful, unconstitutional, and absolutely null and void. That the said custody and unlawful imprisonment of the plaintiff were the result solely of force and fraud exercised and employed by the person who instituted the aforesaid proceedings in the said Supreme Court, in that said persons, shortly prior to March 10, 1897, caused the plaintiff to be lured by false and treacherous statements and promises from his home, in the State of Virginia, to a hotel in said City and County of New York, where plaintiff was, on or about said March 10, 1897, temporarily sojourning, in consequence and reliance upon the urgent request of an agent of said persons and upon the promises of such agent, accompanying such request, that plaintiff's presence in said City and County of New York was desired by such agent solely and exclusively for convivial purposes, whereas the fact was and is that said agent was instructed by the said persons and intended and desired to lure and bring the plaintiff away from the State of Virginia and into the State of New York for the sole and exclusive purpose of giving to the said Supreme Court of New York ostensible and colorable jurisdiction over the plaintiff's person, and of falsely, fraudently and unlawfully inducing and enabling said Supreme Court to arrest and imprison the plaintiff, or cause his arrest or imprisonment as an alleged
14 insane person, but that, by reason of the premises, the order of commitment, made by said Supreme Court on March 10, 1897, was and is invalid and illegal; that said order of March 10, 1897, was made without notice to this plaintiff, and without any opportunity given to him to oppose or contest the making thereof, and without permission to plaintiff to appear before said Court in person or by counsel, but, on the contrary, said Supreme Court in and by said order of March 10, 1897, expressly directed that no notice be given to the plaintiff thereof or of the application therefor, and that therefore said order of March 10, 1897, was a violation of plaintiff's inalienable rights and privileges as a citizen of said United States and of the State of Virginia, and was repugnant to the Constitutions of said United States and of the State of New York, and was and is absolutely null and void, and all acts done thereunder, and especially the acts of the above-mentioned corporation and its superintendent of said prison house, in making and keeping plaintiff a prisoner at all times during the pendency of the proceedings above mentioned as the alleged foundation of said alleged orders of June 23, 1899, and November 19, 1901, were wholly unauthorized, wrongful, illegal, null and void.

IX. That notwithstanding the illegality, invalidity and nullity of the said orders of the said Supreme Court and of the aforesaid

proceedings conducted therein, and upon which said orders were based, the defendant claiming to be, by virtue thereof, a committee of the persons and estate of the plaintiff in and for the State of New York, and under color of the said orders and proceedings, not only took, collected, had and received the aforesaid moneys and
15 other property of this plaintiff, but has, without the consent or authority of this plaintiff, retained and withheld and still retains and withholds the same from this plaintiff and has failed and refused and still refuses to turn over and pay the same to this plaintiff, although requested by the plaintiff to surrender and pay over the same; that on April 4, 1904, at the City of New York, plaintiff, by Osborne & Hess, his attorneys, demanded of and from the defendant the delivery to the plaintiff or to his said attorneys of all moneys, securities, title, deeds and other property, principal and income which defendant was then withholding from plaintiff under color of said alleged proceeding in which defendant claimed to have been appointed a so-called Committee, and then and there notified him that failure on his part to respond at once to said demand would be treated by the plaintiff as a refusal to comply with such demand. That said demand was wholly ignored by the defendant and no response was ever made thereto, nor has the said defendant complied or offered to comply therewith, and the defendant has retained and appropriated and converted to his own use all of the said moneys and other tangible and negotiable property of the plaintiff, and unlawfully and wrongfully deprived the plaintiff of the use and value thereof.

X. That by reason of the premises and of the aforesaid wrongful and illegal acts and misconduct of the defendant, the plaintiff has suffered injury and damage in the sum of not less than two hundred and sixty-three thousand five hundred and twenty-three 65/100 dollars, with interest thereon from April 4, 1914.

16 Wherefore, plaintiff demands judgment against the said defendant for the said sum of two hundred and sixty-three thousand five hundred and twenty-three and 65/100 dollars, with interest from April 4, 1904, besides the costs and disbursements herein.

LEO. G. ROSENBLATT,
Plaintiff's Attorney.

Office and Post Office Address 52 William Street, Borough of Manhattan, New York City.

COUNTY OF ALBEMARLE,
State of Virginia, ss:

John Armstrong Chanler, being duly sworn, says: That he has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes the same to be true.

JOHN ARMSTRONG CHANLER.

Sworn to before me this 9th day of August, 1904.

H. W. WOOD,
Notary Public, Albemarle Co., Va.

My term expires April 15, 1908.

STATE OF VIRGINIA,
County of Albemarle, ss:

I, W. L. Maupin, Clerk of the Circuit Court of the County of Albemarle, in the State of Virginia, the same being a court
17 of record, do certify that H. W. Wood, whose genuine signature is affixed to the foregoing and annexed certificate, was at the time of signing the same a Notary Public in and for the County and State aforesaid, duly commissioned and qualified according to law and authorized to take proof and acknowledgement of deeds and other instruments of writing.

His commission expires 15 day of April, 1908.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court this 9th day of August, 1904.

[SEAL OF VA.] W. L. MAUPIN, *Clerk.*

Answer.

United States Circuit Court, Southern District of New York.

JOHN ARMSTRONG CHANLER, Plaintiff,
against
THOMAS T. SHERMAN, Defendant.

Thomas T. Sherman, the defendant in the above-entitled action appearing therein by Evarts, Tracy & Sherman, his attorneys, answers the plaintiff's complaint in said action as follows:

First. The defendant, upon information and belief, denies each and every allegation contained in Paragraph I of said complaint, except the allegation therein contained that the plaintiff is
18 a person of full age.

Second. The defendant admits each and all of the allegations of Paragraph II of said complaint.

Third. The defendant denies that he has any knowledge or information sufficient to form a belief as to the allegation contained in Paragraph III of said complaint that the alleged order therein mentioned, if any such order was ever made, has never been vacated, reversed or in any particular modified, and upon information and belief the defendant denies each and every other allegation contained in said Paragraph III of said complaint.

Fourth. The defendant denies each and every allegation contained in Paragraph IV of said complaint.

Fifth. The defendant denies the allegation contained in Paragraph V of said complaint that the plaintiff has been and is deprived by the defendant of access to any sources of information as

to the plaintiff's property, and denies that for any reason in that behalf in that paragraph of said complaint alleged, the plaintiff is or has been unable to state with certainty or particularity the exact nature or value of the money or chattels in said complaint referred to, and denies that the plaintiff is dependent entirely upon the defendant for information concerning the plaintiff's real and personal estate.

Sixth. The defendant denies each and every allegation contained in Paragraph VI of said complaint, except the allegations therein contained that the order of the Supreme Court of the State
19 of New York bearing date and entered in the office of the Clerk of the County of New York on the nineteenth day of November, 1901, mentioned and referred to in said paragraph, was made without notice to the plaintiff and upon the petition of Prescott Hall Butler and the written consent of this defendant to be appointed and to act as committee of the person and property of the plaintiff; and he denies that said order was made solely on said petition and consent.

Seventh. The defendant denies each and every allegation contained in Paragraph VII of said complaint, except the allegation therein contained that the said order dated the nineteenth day of November, 1901, purported on its face to appoint the defendant committee of the person and estate of the plaintiff, and accepted the resignation of the said Prescott Hall Butler as committee of the person and property of the plaintiff and that the said Prescott Hall Butler claimed to have been appointed committee of the person and estate of the plaintiff by an order of the said Supreme Court of the State of New York, bearing date, filed and entered June 23, 1899.

Eighth. The defendant, upon information and belief, denies each and every allegation contained in Paragraph VIII of said complaint, except the allegation therein contained that the plaintiff was on or about the tenth day of March, 1897, in a hotel in the County of New York, and except that he denies that he has any knowledge or information sufficient to form a belief as to the allegation in said Paragraph VIII of said complaint, that the order of the Supreme Court bearing date the tenth day of March, 1897, mentioned
20 and referred to in said paragraph of said complaint, was made without notice to the plaintiff.

Ninth. The defendant denies each and every allegation contained in Paragraph IX of said complaint, except the allegation that under and by virtue of the said orders of the Supreme Court of the State of New York, dated respectively the twenty-third day of June, 1899, and the nineteenth day of November, 1901, he has claimed, and now claims, to be the duly appointed committee of the person and estate of the plaintiff, and that under and pursuant to such orders he has as such committee taken, collected and received certain moneys and property of the plaintiff situated in the State of New York, and has retained, and still retains, such part thereof as has not been paid to or for account of the plaintiff or for expenses of administration of the trust thus imposed upon the defendant, and that he has refused, and still refuses, to turn over and pay the same to the

plaintiff, and that on or about the fourth day of April, 1904 (the day before this action was begun), Osborne & Hess, claiming to be the attorneys for the plaintiff, made a certain demand in writing upon the defendant, and that the defendant made no response to said demand and has not complied or offered to comply therewith; but for greater certainty as to the contents of such demand in writing, the defendant begs leave to refer to the original, or to a duly authenticated copy thereof, when the same shall be produced upon the trial of this action; and the defendant, upon information and belief, denies that at the time of the making of such demand, the said Osborne & Hess were attorneys of the plaintiff or in
21 making such demand acted under his instructions; and he denies that he has retained or appropriated or converted to his own use the moneys and other tangible and negotiable property mentioned in the complaint or any moneys or other property of the plaintiff or has wrongfully deprived the plaintiff of the use or value of any such moneys or other property.

Tenth. The defendant denies each and every allegation contained in Paragraph X of said complaint, and denies that, by reason of any act of the defendant, the plaintiff has suffered any injury or damage whatever.

Eleventh. And for a second and further and separate defense the defendant alleges that, at all of the times mentioned in said complaint and at the time of the commencement of this action the defendant was and now is a citizen of the State of New York and a resident of the Town of Rye, in the County of Westchester in said State, and he alleges, upon information and belief, that at all of such times, the plaintiff was, and now is, a citizen of the State of New York and a resident of the City of New York and County of New York, in said State; and that by reason thereof this Court has no jurisdiction of this action or of the plaintiff's said alleged cause of action, or of the parties to this action or of the subject matters thereof.

Twelfth. And for a third and further and separate defense to the plaintiff's said alleged cause of action, the defendant alleges, upon information and belief, that on or about the tenth day of March, 1897, under and pursuant to Chapter 545 of the Laws of 1896 of the State of New York, Winthrop A. Chanler and Lewis S. Chan-
22 ler, two of the brothers of the plaintiff, and Arthur A Carey, a cousin of the plaintiff, presented their petition, duly verified on that day to Hon. Henry A. Gildersleeve, one of the Justices of the Supreme Court of the State of New York in and for the County of New York, and of the Judicial District in which the plaintiff then resided and then was, entitled "In the matter of an application for the commitment of John Armstrong Chanler an alleged insane person," containing a statement of the facts upon which the allegation of insanity therein contained was based, and because of which the application for an order adjudging the plaintiff herein to be insane and committing him to Bloomingdale Asylum at White Plains was made accompanied by a certificate of lunacy made by M.

Allen Starr, M. D., and Eugene Fuller, M. D., two reputable physicians, each of whom was a graduate of an incorporated medical college, who had been in the actual practice of his profession at least three years prior to the making of such certificate, and had filed in the office of the State Commission in Lunacy in the State of New York a certified copy of the certificate of a Judge of a court of record of the State of New York, showing his qualifications as medical examiner in lunacy, that they had jointly made a final examination of the said plaintiff upon the said tenth of March, 1897, the date of such certificate, and such certificate contained the facts and circumstances upon which the judgment of the said physicians was based, and showing that the condition of the said plaintiff was such as to require care and treatment in an institution for the care, custody and treatment of the insane, which petition and certificate were duly made in the manner and form in such case prescribed by the
23 laws of the State of New York; that such proceedings were duly had upon said petition and certificate, that on the said tenth day of March, 1897, an order was duly made by said Justice, to whom jurisdiction in that behalf appertained, ordering and adjudging that the said plaintiff was insane, and that he be committed to the said Bloomingdale Asylum, at White Plains, in the State of New York, an institution for the custody and treatment of the insane, and that such order or judgment of said Justice has never been appealed from, modified, superseded, annulled or set aside, and at all times since the making thereof has remained and is now of full force and effect; that under and pursuant to said order or judgment the said plaintiff was committed to the said asylum, where he remained until on or about the twenty-eighth day of November, 1900, when he escaped and fled therefrom and from the State of New York; that on or about the ninth day of May, 1899, pursuant to the provisions of law in that behalf the said Winthrop Chanler and Lewis S. Chanler, brothers of the plaintiff, John Armstrong Chanler, presented their petition, duly verified on the eighth day of May, 1899, to the Supreme Court of the State of New York, at a Special Term of said Court in and for the County of New York, in the State of New York, in which County the said John Armstrong Chanler then resided entitled "In the Matter of John Armstrong Chanler, an alleged incompetent person," alleging, among other things, that the said John Armstrong Chanler formerly resided at the Kensington Hotel, Fifth Avenue and Fifteenth Street, in the Borough of Manhattan, in the City of New York, and that on the tenth day of March, 1897, the said John Armstrong Chanler was ad-
24 judged insane and committed to the Bloomingdale Insane Asylum at White Plains, New York, by the Hon. Henry A. Gildersleeve, one of the Justices of the said Supreme Court of the State of New York, and that since the said tenth day of March, 1897, and some time previous thereto, the said John Armstrong Chanler was, and has ever since been, of unsound mind and so far deprived of his reason and understanding as to be altogether unfit and unable to govern and manage his affairs, and had been at times frequently

violent and dangerous to himself and to those about him, and that he was, within the meaning of Title VI, Chapter 17, of the Code of Civil Procedure, an incompetent person, and praying that Stanford White, or some other suitable and proper person, might by the order and judgment of said Court, be appointed committee of the person and of the property and estate of the said John Armstrong Chanler as an incompetent person, which petition was duly accompained with proof, by affidavits, that said case was one of those specified in said title of said Code; that under and pursuant to an order of said Court, bearing date the ninth day of May, 1899, due notice in writing that upon the said petition and affidavits an application would be made to said Court at a Special Term thereof at the County Court House in the County of New York, in the State of New York, on the nineteenth day of May, 1899, at half-past ten o'clock in the forenoon of that day or as soon thereafter as counsel could be heard, for an order granting the prayer of said petition, was personally served on the ninth day of May, 1899, upon the said John Armstrong Chanler in the manner prescribed by the laws of said State and by said order, by delivering to, and leaving with
25 the said John Armstrong Chanler, in person, at the Bloomingdale Asylum in the Village of White Plains, in the County of Westchester, in the State of New York, true copies of said notice and order and petition and affidavits and at the same time and place delivering to, and leaving with Dr. Samuel B. Lyon, the person in charge of the said asylum, in person, true copies of said notice, order, petition and affidavits, and that notice of such application was also given in the manner prescribed by the laws of said State and by said order to Margaret Chanler, Alida Emmet, William A. Chanler, Robert W. Chanler and Elizabeth W. Chapman, two brothers and the sisters of said John Armstrong Chanler, who with the said Winthrop Chanler and Lewis S. Chanler were all of the heirs at law and next of kin of said John Armstrong Chanler; that thereafter such proceedings were duly had in said proceeding that on the nineteenth day of May, 1899, the said Court, at a Special Term thereof, held at the County Court House in the County of New York, in the State of New York, duly made an order bearing date on that day directing that a commission in the nature of a writ de lunatico inquirendo be issued out of and under the seal of said Court in the usual form directed to David B. Ogden, Esquire, counselor at law, Allen Fitch, M. D., and George Sherman, all of the Borough of Manhattan, in the City of New York and County of New York, to enquire by a jury of the said County, among other things, whether the said John Armstrong Chanler was an incompetent person and incapable of managing his person and estate, and as to the value of the real and personal estate owned by the said John Armstrong Chanler, and also the property belonging
26 to him which had been conveyed during his alleged incompetency, and to whom and its value and the consideration paid therefor, and directing that the Sheriff of the County of New York be instructed in said commission to summon a jury in the man-

ner required by law, and directing that said commission be executed in the Borough of Manhattan, in the City and County of New York, and that previous notice of the time and place of such execution be given to the said John Armstrong Chanler and to Dr. Samuel B. Lyon, the person having the charge and care of him, at least five days before the date thereof, and that, upon the execution of the said commission, the said Dr. Samuel B. Lyon produce the said John Armstrong Chanler before the said Commissioners and jury to be inspected and examined by them whenever the said Commissioners should so demand, and that the said Commissioners might, in their discretion, dispense with the attendance of the said John Armstrong Chanler before them and a jury, unless the jurors, some or one of them, should require his attendance before the jury, and directing that said commission issue in conformity with said order; that thereafter a commission was duly issued out of and under the seal of said Court in the form prescribed by law and directed by said order and addressed to the persons named in said order; that due notice in writing that said commission had been issued, and that the same would be executed at the County Court House in the Borough of Manhattan and City of New York on the twelfth day of June, 1899, at four o'clock in the afternoon of that day, signed by said Commissioners, was duly served on the sixth day of June, 1899, upon the said John Armstrong Chanler at the Bloomingdale Asylum in the Village of White Plains, in the County of Westchester,
27 in the State of New York, in the manner prescribed by the laws of said State, by delivering to and leaving with the said John Armstrong Chanler, in person, a true copy of said notice, and at the same time and place, delivering to and leaving with the said Dr. Samuel B. Lyon, the Superintendent of the Bloomingdale Insane Asylum, in whose charge the said John Armstrong Chanler then was, in person, a copy of the said notice; that at the time and place specified in said last mentioned notice the said Commissioners by a lawful jury of said County duly enquired into the matters and things which by said order and commission they were directed to enquire into, and examined the witnesses and evidence produced before them, and in all respects duly executed said commission in the manner prescribed by the laws of said State and by said order and commission; that the said inquisition was duly signed by the jurors more than twelve, that is to say, fifteen, in number concurring therein and by all of the said Commissioners and annexed to said commission and the said commission and inquisition were returned by said Commissioners and filed with the Clerk of the County of New York on the fifteenth day of June, 1899; that in and by the said inquisition the said Commissioners and jurors duly found, among other things, that, at the time of the taking of such inquisition, the said John Armstrong Chanler was a lunatic, and was of unsound mind, and did not enjoy lucid intervals, so that he was incapable of managing his person and property, and that he had been in the same state of lunacy since the tenth day of March, 1897; that the said John Armstrong Chanler was then confined in the

Bloomingdale Asylum at White Plains, in the State of New York, and that he had been committed here on the tenth day of March, 1897, under proceedings taken in ac-
iance with the laws of the State of New York; and the defendant
ther alleges that thereafter and on the twenty-third day of June,
9, application was duly made to said Court at a Special Term
reof held at the County Court House in the County of New York,
the State of New York, for a decretal order confirming the said
uisition and appointing Prescott Hall Butler committee of the
son and estate of the said John Armstrong Chanler; that due
ice in writing of such application was served upon the said John
mstrong Chanler on the fifteenth day of June, 1899, by delivering
nd leaving with the said John Armstrong Chanler in person, at the
omingdale Asylum in the Village of White Plains, in the County
Westchester, in the State of New York, a copy of said notice and
the petition of the said Winthrop Chanler and Lewis S. Chanler,
ly verified on the fourteenth day of June 1899, upon which said
plication was based, and at the same time delivering to and leav-
g with Dr. Samuel B. Lyon, the person in charge of said Bloom-
gdale Asylum, in person, a copy of said notice and petition; that
the said twenty-third day of June, 1899, the said Court at the
d Special Term thereof, duly made an order bearing date on that
y, ratifying and confirming the findings of the said Commissioners
d jurors upon the execution of said commission, as set forth in
d inquisition, and adjudging as found by said Commissioners and
rors that on the twelfth day of June, 1899 the time of the taking
of said inquisition, the said John Armstrong Chanler was
a lunatic, and was a person of unsound mind, and did not
enjoy lucid intervals, and was incapable of managing his
rson and property, and that he had been in the same state of
nacy since the tenth day of March, 1897, at which time he had
en committed to the Bloomingdale Asylum in the State of New
ork under proceedings taken in accordance with the laws of the
ate of New York for the commitment to asylums of insane per-
ns, and appointing Prescott Hall Butler committee of the person
d property of the said John Armstrong Chanler, and directing
at before he enter upon the discharge of his duties as such com-
ittee he execute with sureties the bond prescribed by said order
d cause the same to be approved by one of the Justices of said
urt and filed in the office of the Clerk of the County of New York;
at said order was duly entered and recorded in the office of the
erk of the County of New York, in the State of New York, on the
id twenty-third day of June, 1899; that on the twenty-seventh
y of June, 1899, the said Prescott Hall Butler duly filed the bond
escribed by said last mentioned order duly executed and approved
one of the Justices of said Court and entered upon his duties as
ch committee, and that he continued to be and to act as the duly
pointed committee of the person and property of the said John
rmstrong Chanler until the acceptance by said Court of his resigna-
on as such committee as hereinafter stated; that on the nineteenth

day of November, 1901, the said Prescott Hall Butler presented to said Court his petition entitled "In the matter of John Armstrong Chanler an incompetent person," duly verified by him on the fifteenth day of November, 1901, whereby he resigned his office
30 and duties as committee as aforesaid and prayed that such resignation be accepted, and that Thomas T. Sherman, the defendant herein, be appointed committee of the person and property of the said John Armstrong Chanler in the place and stead of the said Prescott Hall Butler, which request that the said Thomas T. Sherman be appointed as such committee was made at the special instance and request of the heirs at law and next of kin of the said John Armstrong Chanler, and thereafter and on the said nineteenth day of November, 1901, by an order of said Supreme Court made at a Special Term thereof held in and for the County of New York, bearing date and duly filed and entered in the office of the Clerk of the said County of New York on that day, such resignation of the said Prescott Hall Butler as committee of the person and property of the said John Armstrong Chanler was accepted and Thomas T. Sherman, this defendant, was appointed the committee of the person and property of the said John Armstrong Chanler, all of which will more fully and at large appear from such proceedings of the records thereof, to each and all of which the defendant begs leave to refer upon the trial of this action as if the same were herein set forth at large; that the said Supreme Court of the State of New York was at all the times hereinbefore mentioned, and now is, a Superior Court of record having general jurisdiction in law and equity, and having jurisdiction of the subject matters of each of the proceedings hereinbefore in this paragraph of this answer mentioned and referred to, and duly acquired, in each of said proceedings, jurisdiction of the person of the said John Armstrong Chan-
31 ler, the plaintiff herein, and had jurisdiction and power to do the several acts and things and to make the several orders, decrees or judgments done and made by it in said proceedings; that none of said orders, decrees, or judgments has ever been appealed from, modified, annulled or set aside, and each of them at all times since the same was made, has been, and now is, of full force and effect; that the defendant as committee of the person and property of the plaintiff appointed by the said Supreme Court, is an officer of the said Court subject to the control and order of said Court, and that any and all acts of the defendant in respect to the person or property of the plaintiff have been as such committee.

Thirteenth. And for a fourth and further and separate defense to the plaintiff's alleged cause of action the defendant repeating the allegations contained in Paragraph Twelfth of this answer as if the same were herein set forth at large, alleges that by said orders, decrees or judgments of said Supreme Court of the State of New York, dated respectively the tenth day of March, 1897, and the twenty-third day of June, 1899, the plaintiff herein was duly adjudged to be a person incompetent to manage himself or his affairs, in consequence of lunacy, and that by said order of said Court dated the nineteenth day of November, 1901, this defendant was duly

appointed the committee of the person and property of the plaintiff, none of which orders, decrees or judgments has ever been appealed from, modified, superseded, annulled or set aside, and each of which, ever since the same was made, has been, and now is, of full force and effect, and that by reason thereof the plaintiff is in-
32 competent to institute or prosecute this action.

Fourteenth. And for a fifth and further and separate defense to the plaintiff's alleged cause of action the defendant, repeating the allegations and things contained in Paragraph Twelfth of this answer as if the same were herein set forth at large, alleges, upon information and belief, that the alleged petition mentioned and referred to in Paragraph III of said complaint was made in the name of, and was signed by, one C. Ruffin Randolph, but was not sworn to or otherwise verified; that said alleged petition was not presented to the County Court of Albemarle County, in the State of Virginia, as required by the statutes of said State in such case made and provided, but was addressed and presented to Hon. John M. White, a Judge of said Court; that said alleged petition was not presented and the proceeding thereby instituted was not instituted or conducted or prosecuted, by the said C. Ruffin Randolph in good faith, for the purpose in that behalf authorized by the laws of the State of Virginia, namely, to procure an adjudication that the said plaintiff was insane, and by reason thereof incapable of managing himself or his property and to procure the appointment of a committee of his person, but was instituted, conducted and prosecuted in collusion with the plaintiff herein or with some other person or persons acting on his behalf or in his interest for the purpose of procuring an adjudication that the said plaintiff was sane and capable of managing himself and his property, and for the purpose of making a record to be used in litigation then pending, or which the said plaintiff or some person or per-
33 sons in his interest then contemplated in respect of his property; that the said proceeding was in fact ex parte, and the testimony and evidence produced therein was biased, and the greater part thereof wholly incompetent; that no process or notice of said proceeding, or of any stage thereof, was ever issued or served, and no such process or notice was ever served upon the said plaintiff, or upon Prescott Hall Butler (who was then a citizen of the State of New York, and a resident of the City and County of New York, in said State of New York, and who was not then in the said State of Virginia), and who was from the twenty-third day of June, 1899, until the nineteenth day of November, 1901, the duly appointed and qualified and acting committee of the person and estate of the said plaintiff, either individually or as such committee, or upon this defendant (who was then a citizen of the State of New York, and a resident of the Town of Rye, in the County of Westchester in said State of New York, and who was not then in the said State of Virginia), either individually, or as committee of the person and prpoerty of the said plaintiff or upon any of the heirs at law or next of kin of the plaintiff, and that no heir at law or next of kin

of plaintiff, and neither the said Prescott Hall Butler, nor this defendant ever appeared in said proceeding, either individually, or as committee as aforesaid, in person, or by attorney or counsel; that the plaintiff herein, pursuant to such collusion, agreement or understanding with the said C. Ruffin Randolph, voluntarily presented himself before said Judge of said County Court upon the hearing in said proceeding, but that such appearance was of no effect, and did not give to said Judge, or to said County
34 Court, jurisdiction to entertain said alleged petition, or to make said alleged order or judgment, inasmuch as the said plaintiff had prior thereto by said orders or judgments of the Supreme Court of the State of New York bearing date respectively the tenth day of March, 1897, and the twenty-third day of June, 1899, been duly adjudged to be a lunatic and a person of unsound mind and incapable by reason thereof of managing his person or property, and the said Prescott Hall Butler had, by said last mentioned order or judgment, been duly appointed committee of the person and property of the said plaintiff, which orders or judgments of the said Supreme Court of the State of New York were, at the time of the presentation of said alleged petition to said Judge of said County Court of Albemarle County, and of the making of said alleged order or judgment, by him, and now are, of full force and effect, and which appointment of the said Prescott Hall Butler as committee as aforesaid was, at the time of the presentation of said alleged petition to said Judge of said County Court of Albemarle County, and of the making of said alleged order or judgment by him, in full force and effect, and, inasmuch as the said plaintiff was, in fact, at the time of his voluntary appearance in said proceeding in said County Court in said Albemarle County, a lunatic and a person of unsound mind and incapable of voluntarily appearing upon the hearing in said proceeding, or of doing any act or thing to confer upon said Judge or upon said County Court of Albermarle County jurisdiction of his person, or of the subject matters of said proceeding, and that neither said Judge nor
35 said County Court ever acquired jurisdiction in said proceedings of the person of the plaintiff herein, or of the said Prescott Hall Butler, individually, or as committee of the person or property of the plaintiff herein, or of this defendant, either individually, or as committee of the person or property of the plaintiff herein, or of any heir at law or next of kin of the plaintiff, or of the property of said plaintiff in the hands of the said Prescott Hall Butler as such committee, or in the hands of this defendant as such committee, or of the subject matters of said proceedings, or power or authority to make said alleged order or judgment, and that the said alleged order or judgment was at the time of the making thereof, and now is, wholly void and of no force and effect and should be so adjudged by the judgment to be entered herein; and that if said order be valid for any purpose (which this defendant, upon information and belief, denies), it is voidable for the reasons aforesaid and should, by the judgment to be entered herein,

be wholly vacated and set aside; and if said order be valid for any purpose (which this defendant, upon information and belief, denies), it has no force or effect whatever outside of the State of Virginia, and did not and does not operate to modify, annul, set aside, or supersede the said orders or judgments of the Supreme Court of the State of New York, dated respectively, the tenth day of March, 1897, the twenty-third day of June, 1899, and the nineteenth day of November, 1901, or to modify, restrict or limit the power and authority conferred or intended to be conferred by said orders or judgments upon the said Prescott Hall Butler or this defendant, and was and is of no binding force or effect whatever upon any heir at law or next of kin of the plaintiff, or upon the said Prescott Hall Butler, individually, or as committee of the person and property of the said plaintiff, or upon this defendant, individually, or as committee of the person and property of said plaintiff, or upon the property of the plaintiff in the hands of either of them as such committee and should be so adjudged by the judgment to be entered herein.

36

Fifteenth. And for a sixth and further and separate defense to the plaintiff's said alleged cause of action the defendant alleges, upon information and belief, that the plaintiff, at all of the times mentioned and referred to in said complaint, was, and now is, a lunatic and a person of unsound mind, and that by reason thereof he is incompetent to manage himself or his affairs, or to employ counsel, or to institute or prosecute this action.

Sixteenth. And for a seventh and further and separate defense to the plaintiff's said alleged cause of action the defendant, repeating the allegations and things contained in Paragraph Twelve of this answer as if the same were herein set forth at large, alleges that the property of the plaintiff situated in the State of New York is in the exclusive custody and control of the Supreme Court of the State of New York, and that the defendant is the duly appointed committee of the person and property of the plaintiff, and as such is an officer of said Court, and that said Court has exclusive jurisdiction of all matters and actions in respect of such property, and has exclusive jurisdiction of the subject matters of this action, and of all of the issues therein, and that this Court has no jurisdiction of this action, or of any of the subject matters thereof.

37

Seventeenth. And for an eighth and further and separate defense to the plaintiff's said alleged cause of action, the defendant, repeating the several allegations and things contained in Paragraph Twelve of this answer as if the same were herein set forth at large, alleges that the plaintiff is, and at all the times mentioned in said complaint was, a duly adjudged lunatic, and a person incompetent to manage himself or his property in consequence of such lunacy, and that ever since the nineteenth day of November, 1901, the defendant has been, and now is, the duly appointed, qualified and acting committee of the person and property of said plaintiff; that, acting under and pursuant to, and in reliance upon, the said orders or judgments of the Supreme Court of the State of New York dated respectively the tenth day of March, 1897, the twenty-third day of

June, 1899, and the nineteenth day of November, 1901, and in execution of the duties and trusts thereby imposed upon him, he has in good faith collected and received the several items of property and money belonging to the plaintiff, which are in that behalf mentioned and referred to in his inventory and account and referred to in Paragraph V of said complaint and hereinafter in this paragraph of this answer referred to, and has paid out of the moneys in his hands certain expenses of administration of said trust and certain sums for the support and maintenance of the plaintiff in that behalf mentioned and referred to in said inventory and account and that on the first day of December, 1903, he had in his hands as such committee the several items of property and money belonging to
38 said plaintiff, which are in that behalf mentioned and referred to in said inventory and account, and that since the said first day of December, 1903, he as such committee, has received certain additional sums of money belonging to the plaintiff, and has paid out — the moneys in his hands certain expenses of administration of the trust reposed in him as such committee and certain sums for the support and maintenance of the plaintiff, and that he now has in his hands as such committee the residue of such property; that, pursuant to the directions in that behalf contained in an order duly made by the Presiding Justice of the Appellate Division of the Supreme Court of the State of New York, First Department, which department includes, and is co-extensive with, the said County of New York, on the tenth day of February, 1903, and entered on the same day in the office of the Clerk of said Appellate Division, this defendant as committee as aforesaid was required to, and did, present to Rollin M. Morgan, Esq., the Referee, duly appointed by said order to examine the accounts and inventories filed or required to be filed in the office of the Clerk of the County of New York by the committees of the property of lunatics, idiots and habitual drunkards during the months of January, 1898, 1899, 1900, 1901, 1902 and 1903, in accordance with Section 2341 of the Code of Civil Procedure of the State of New York, which had not been previously examined or judicially settled prior to the first day of February, 1903, his inventory and account from the date of his appointment as such committee to the first day of December, 1903, and that such proceedings were duly had by and before such Referee that, on or about the thirtieth day of January, 1904, the said Referee
39 duly made and filed his report in the office of the Clerk of said Appellate Division whereby he found and reported among other things, that, after examining the assets of the estate of the plaintiff the items of income collected and vouchers submitted to him for the disbursements set forth in said account and this defendant, under oath, the assets were as set forth in said account and in said report; that the income had been properly collected by this defendant, as such committee; that there were either vouchers for all of the payments stated to have been made by the said committee, or, in case vouchers were missing, their absence had been sufficiently explained and the testimony annexed to said report established such payments and the propriety thereof; that all of the

payments made as charged in said account were proper payments, and that said account was correct and should be approved; that thereafter and on the tenth day of February, 1904, an order was duly made by said Presiding Justice and entered in the office of the Clerk of said Appellate Division in all respects confirming said report of said Referee, which order has never been appealed from, modified, superseded, vacated or set aside, and is now in full force and effect, as by reference to said several orders, account and inventory and Referee's report will more fully and at large appear, and to which this defendant begs leave to refer upon the trial of this action as if the same were herein set forth at large; that the defendant upon his appointment as such Committee duly filed in the office of the Clerk of the County of New York, his bond as such committee in the sum of fifty thousand dollars with the Lawyers' Surety Company of New York as surety; that he has not converted any of the plaintiff's property or money to his own use or benefit, but has at all times held and safely kept, and now holds and safely keeps, the same as committee as aforesaid, upon the — subject to the duties and trusts by the laws of the State of New York imposed upon him as such committee; and has at all times been, and now is, ready and willing to account therefor when thereunto duly required by a Court of competent jurisdiction.

Wherefore, the defendant demands judgment dismissing the complaint with costs.

EVARTS, TRACY & SHERMAN,
Attorneys for Defendant.

STATE OF NEW YORK,
Southern District of New York,
County of New York, ss:

Thomas T. Sherman, being duly sworn, deposes and says: That he is the defendant in the foregoing answer named; that he has read said answer and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

THOS. T. SHERMAN.

Sworn to before me this 29th day of November, 1904.
[L. S.]
CHARLES S. BUTLER,
Notary Public, No. 281, New York County.

41 *Order Amending Title as to Change of Plaintiff's Name.*

At a Stated Term of the Circuit Court of the United States for the Southern District of New York, Held at the Court-rooms thereof in the Post Office Building, in the Borough of Manhattan, City, County, and State of New York, on the 18th Day of October, 1909.

Present: Hon. E. H. Lacombe, U. S. Circuit Judge.

JOHN ARMSTRONG CHANLER, Plaintiff,
against
THOMAS T. SHERMAN, Defendant.

Upon reading and filing the annexed stipulation and consent of the attorneys for the respective parties hereto, it is now on motion of William D. Reed, attorney for plaintiff,

Ordered that in all future proceedings in the above entitled case the name John Armstrong Chanler shall read John Armstrong Chaloner wherever the same may appear therein, and it is

Further ordered that the Clerk of this Court note the foregoing amendment to the title of this case upon the docket of this Court.

E. H. LACOMBE,
United States Circuit Judge.

42 United States Circuit Court for the Southern District of New York.

JOHN ARMSTRONG CHANLER, Plaintiff,
against
THOMAS T. SHERMAN, Defendant.

At the request of the attorney for the plaintiff herein and upon his statement that the plaintiff has expressed a desire hereafter to be known as John Armstrong Chaloner instead of John Armstrong Chanler as heretofore, it is now without prejudice to any of the rights of the parties hereto

Stipulated and agreed between the attorneys for the respective parties hereto that in future proceedings in the above entitled case the name of John Armstrong Chanler shall read John Armstrong Chaloner wherever the same may appear therein, and it is

Further consented that an order to that effect may be entered herein without costs and without further notice.

Dated, New York, August 4, 1909.

WILLIAM D. REED,
Attorney for Plaintiff.
EVARTS, CHOATE & SHERMAN,
Attorneys for Defendant.

43 *Bill of Exceptions and Exhibits.*

United States District Court, Southern District of New York.

JOHN ARMSTRONG CHALONER, Plaintiff,
against
THOMAS T. SHERMAN, Defendant.

Be it remembered that on the 19th, 20th, 21st and 23rd days of February, 1912, the above-entitled cause came on for trial before the above Court and a jury duly empanelled.

Hon. George C. Holt, Presiding.

The plaintiff appearing by William D. Reed, his attorney, and Hugh Gordon Miller, Frederick A. Ware and W. Gilmer Dunn, of counsel; the defendant appearing by Evarts, Choate & Sherman, his attorneys, and Joseph H. Choate, Jr., and John G. Milburn, of counsel, the following proceedings were had:

The usual opening speech in behalf of the plaintiff was made by Mr. Ware, of plaintiff's counsel.

Demand made by the plaintiff through his counsel on the defendant for the property which is the subject matter of the suit, said demand being dated April 4, 1904, prior to the bringing of the action, received in evidence and marked Plaintiff's Exhibit 1, and read to the jury by Mr. Miller.

(Printed at page 125.)

44 Mr. Miller: Will it be admitted that there was no delivery under that letter?

Mr. Choate: It is admitted.

HENRY C. SIMONS, called as a witness in behalf of the plaintiff, being duly sworn, testified as follows:

Direct examination by Mr. Miller:

My name is Henry C. Simons. I am clerk and custodian of the records of the Department of Taxes and Assessments, main office. I have been summoned by a subpœna duces tecum to produce records from our office at this trial. I have produced that record. This document is dated 1896. The date that the assessed made the affidavit appears on the paper.

By the Court:

Q. What do you call that?

A. Personal affidavit of Mr. Chanler. It refers to the taxes of 1896.

Received in evidence and marked Plaintiff's Exhibit 2, and read to the jury by the witness as follows:

"Hours for correction of assessment, 10 A. M. to — P. M., except Saturdays, and then 10 A. M. to 12 M.

"The department is not required by law to send this notice. It

is sent for the information and benefit only of the party assessed. Please bring this notice with you."

45 Then book line 2192, page 122:

"John A. Chanler, 120 Broadway. Department of Taxes and Assessments, Stewart Building. New York, January 13, 1896. You are hereby notified that your personal estate for 1896 is assessed at $10,000, exclusive of bank stock, and that the same is erroneous must be corrected before the Commissioners on or before the 30th day of April next or it will be confirmed at that amount, from which there will be no appeal. By order of the Commissioner of Taxes and Assessments. C. Rockland Tyng, Secretary."

On April 28 he appeared before the Board and they put this rubber stamp on. The rubber stamp reads: "I hereby swear that on the second Monday of January last the value of my personal property, exclusive of bank shares, subject to taxation, did not exceed $0." Then in his own handwriting, or in some penmanship, I can't say whose handwriting, this appears to the side:

"Chanler, Maxwell & Phillip, lawyers."

Then the Commissioners' signatures appear: "T. S." standing for Theodore Sutro, and "W" standing for Wells.

Then below that is this in writing: "I practice law here, but devote my time in an enterprise in North Carolina. I have no intention of resuming my residence here. I claim that I am not taxable here, but nevertheless consent to an assessment of $2,500. My residence is Cobham, Virginia." Signed to the right, "John Armstrong Chanler," and to the left, the initial of the Commissioner that swore him, "T. S.," standing for Theodore Sutro.

I have examined the books to see if Mr. Chanler was assessed for anything in 1895. He was not.

46 Subject to correction, it is conceded that the signature to Plaintiff's Exhibit No. 2 is that of Mr. Chanler, the plaintiff.

Deposition of Princess AMELIE RIVES TROUBETZKOY, taken before H. W. Wood, a Notary Public, in and for the County of Albemarle, Virginia, at the home of the said Amelie Rives Troubetzkoy, at Castle Hill, Cobham, Albemarle County, Virginia, on the 2nd day of April, 1906, commencing at 11 o'clock in the forenoon thereof, in pursuance to an annexed notice, marked Exhibit A, for use at the trial on behalf of the plaintiff, read on behalf of the plaintiff as follows:

My name is Amelie Rives Troubetzkoy. My home is Castle Hill, Virginia. I know the plaintiff John Armstrong Chanler. I have known him since 1887. I married him in 1888. I was married to him until the divorce in 1895. Mr. Windsor obtained the divorce.

"Q. Where was it obtained?"

Mr. Milburn: We may as well have an objection to this deposition, Your Honor, that will govern as to the extent to which it can be read, and that is that so far as the deposition relates to what

happened in connection with the proceedings resulting in the appointment of the committee, it is perfectly material, but that everything about this deposition that has no relation to those proceedings, that shows Mr. Chanler's condition in previous years, his marriage and his divorce, or his condition after that time, is all absolutely immaterial on what the Court has ruled here, or rather I will not say ruled, but intimated, that the primary issue
47 here is what were the conditions at the time this committee was appointed, what was then done, what notice was there.

The Court: I shall agree with that general position. I can only rule on specific questions.

Mr. Milburn: All about this marriage and divorce, I object to that.

Mr. Miller: It merely shows the relationship of the witness to the party who is in issue here. It is simply leading up. It is always necessary to start somewheres with a witness.

Mr. Milburn: I object to the last question, which was, "Where was it obtained"—referring to the divorce.

The Court: I will sustain that objection.

Mr. Miller: Exception.

I have not seen Mr. John Armstrong Chanler since I was divorced from him. I have seen him at a distance, twice. I have not spoken to him.

"Q. Have you since married again?"

Objection to; objection sustained; exception to plaintiff.

"Q. What was the condition of the plaintiff's health during his marriage to you?"

Objected to as immaterial; objection sustained; exception to plaintiff.

Mr. Miller: That went to the things, the fraudulent and perjurous things alleged against him. One of them was that his physical condition was something that we will prove here was not true, and that it was perjury and a fraud on the Court, and that is in issue here. It goes to the rottenness of that commitment in 1897.

48 The Court: The matter of the commitment, in my opinion, has nothing to do with the case here. Mr. Sherman had nothing to do with that commitment. If Mr. Chaloner was wrongfully treated in the matter of that commitment, it was by the people who caused it to be done.

Mr. Miller: But the whole proceeding of 1899 and everything else starts there. If that falls, all falls. That is the foundation stone of the whole business, and if the foundation stone is rotten the whole temple falls. He would never have been in Bloomingdale at all but for that, and we expect to prove that that was rotten in every respect, in every conceivable manner, and we expect to show how it was rotten. This is the foundation stone, and this whole lunacy commitment of 1899, the whole proceeding is recited as part of that record.

The Court: A man may be taken to a lunatic asylum on a certificate of physicians, and that proceeding may be entirely irregular and illegal, and while he is there, there may be proceedings instituted for an inquisition as to his lunacy, which may result in the adjudication that he is a lunatic, and in that case it is entirely valid, and has nothing to do with his previous condition.

Mr. Miller: But he was put there on an indeterminate commitment, and he stayed there nearly four years. It was without any appearance by him, he was put in Bloomingdale by an ex parte proceeding in New York, and that was as rotten as the first.

The Court: When you come to the proceeding on the inquisition you may show all the facts about his situation. The fact of his being sent there before any proceedings were taken on the
49 inquisition is something for which Mr. Sherman has no responsibility, and it has nothing to do with this case.

Mr. Miller: Except that he got his title there, if he had any title.

The Court: He did not get any title through the commitment of the insane man, but he got his title through the order of the court which took possession of the property.

Mr. Miller: But we contend that these people perpetrated an infamous fraud on the Court, and we want to prove it.

"Q. Please state what, if any, sickness he had during that period?"

Objected to; objection sustained; exception to plaintiff.

"Q. What was the condition of his health generally?"

Objected to; objection sustained; exception to plaintiff.

"Q. Was he athletic?"

Objected to; objection sustained; exception to plaintiff.

"Q. After his marriage where did he spend his time?"

Objected to; objection sustained.

Mr. Miller: I except, your Honor, and will not read any more questions bearing on that subject. I will skip them as far as I can, and get to something else, but I will except, of course, take a general exception.

50 "Q. I now offer in evidence, marked 'Exhibit P,' a printed copy of the 1897 lunacy proceedings, and ask that same be filed with these depositions. In these proceedings, under the statement of facts alleged against the plaintiff, were the following: 1st. That 'Mr. J. A. Chanler has for several months while at his home in Virginia been acting in a very erratic manner'—this refers to his conduct presumably for the several months preceding the trial in New York in 1897?"

Mr. Miller: We offer in evidence Exhibit P, a certified copy of these proceedings.

Mr. Milburn: We object to them as immaterial.

The Court: These are the proceedings on Dr. Starr's certificate, the original commitment?

Mr. Miller: Yes, sir.

The Court: I sustain the objection.

Mr. Miller: Exception.

(Contained in Plaintiff's Exhibit 3 and later admitted as a part thereof, and printed at page 203.)

"Q. In these proceedings, under the statement of facts alleged against the plaintiff, were the following: 1st. That 'Mr. J. A. Chanler has for several months while at his home in Virginia been acting in a very erratic manner'—this refers to his conduct presumably for the several months preceding the trial in New York in 1897? Please state whether or not you have any information concerning this allegation?"

Objected to; objection sustained; exception to plaintiff.

At that time I was at "Castle Hill." "Castle Hill" is about three or four miles from Mr. Chanler's home, the "Merry Mills."

51 "Q. It is then alleged in this petition in these proceedings that he has limited himself to a peculiar diet—during the period that you knew him and were married to him, please state what, if anything, was peculiar about his diet?"

Objected to; objection sustained; exception to plaintiff.

"Q. During that period the chief or only peculiarity about his diet was the fact that he was a vegetarian?"

Objected to; objection sustained; exception to plaintiff.

"Q. It is next alleged that 'he has devised many peculiar projects, such as a roulette scheme to beat Monte Carlo;' please state what, if anything, you know about this allegation?"

Objected to; objection sustained; exception to plaintiff.

"Q. It is then alleged that 'he gives as a reason for these and other acts that he is inspired by a spirit which directs him,' what do you know of this allegation?"

Objected to; objection sustained; exception to plaintiff.

"Q. Have you any reason for saying that you can't think of him as having said that?"

Objected to; objection sustained; exception to plaintiff.

"Q. It is next alleged that 'for the past three weeks in New York he has constantly talked of this delusion; he has neglected
52 his health; has injured his person; has been at times wildly excited.'"

Objected to; objection sustained; exception to plaintiff.

"Q. Then in the certificate of the Judge, commencing at line 187 of the proceedings, it is said that 'The patient is in such a state

of excitement and is so easily made dangerous to himself and to others by any criticism of or opposition to his delusion that a personal service would be attended by great danger;' do you know anything about that allegation?"

Objected to; objection sustained; exception to plaintiff.

"Q. During the period that you knew Mr. Chanler, what were his opinions on the subject of spiritualism?"

Objected to; objection sustained; exception to plaintiff.

"Q. Did he ever do anything to suggest to you that he had delusions?"

Objected to; objection sustained; exception to plaintiff.

"Q. Will you please state what was his general temperament—excitable or otherwise?"

Objected to; objection sustained; exception to plaintiff.

"Q. Is he any more excitable or high strung than the others?"

Objected to; objection sustained; exception to plaintiff.

53 "Q. In the certificate, commencing at line 205, it is stated that there was one previous attack, presumably referring to lunacy; do you know anything about this charge?"

Objected to; objection sustained; exception to plaintiff.

Mr. Miller: In that connection I want to show that she was with him at that time and knows all the facts and circumstances, and that that is a false statement in the papers that committed him.

The Court: I am willing to take your statement for it, but it has nothing to do with the case whatever, in my opinion.

Mr. Miller: I except. That same statement was made in the proceeding of 1899, and surely if Mr. Sherman has any title of any kind, or color of title, he must get it from the 1899 alleged Sheriff's jury proceeding, and that same allegation was made there, that he had been confined in a lunatic asylum in France, and I will show that that is absolutely false.

The Court: I will pass upon that question when we come to it.

Mr. Miller: We have already come to it in this deposition.

The Court: I sustain the objection.

Mr. Miller: I except.

"Q. During that period was there or not anything to suggest a contrary opinion?"

Objected to; objection sustained; exception to plaintiff.

"Q. It is alleged that the present attack, referring to the
54 attack with which he is charged in New York, began in November, 1896?"

Objected to; objection sustained; exception to plaintiff.

"Q. Have you ever heard any rumors that affected his sanity?"

Objected to; objection sustained; exception to plaintiff.

"Q. It is next alleged that he was confined at Neuilly, near Paris, France, some years ago for a short time, please state whether or not this is true?"

Objected to; objection sustained; exception to plaintiff.

"Q. Will you explain what, if anything, could have been a basis for this charge?"

Objected to; objection sustained; exception to plaintiff.

"Q. Then you state that he was only at Neuilly once, and that time to see a friend?"

Objected to; objection sustained; exception to plaintiff.

"Q. What did you mean by saying 'he was extremely quiet that Spring,' in your above answer?"

Objected to; objection sustained; exception to plaintiff.

"Q. Then did you or not refer to his excitability in that answer?"

55 Objected to; objection sustained; exception to plaintiff.

"Q. Was he, or not, a very energetic man?"

Objected to; objection sustained; exception to plaintiff.

"Q. In this certificate of lunacy they state that he was excited, is armed, threatens people, is dangerous; during the period that you knew him did he or not ever do anything to indicate that he was dangerous?"

Objected to; objection sustained; exception to plaintiff.

1899 lunacy proceedings before the Sheriff's jury, the same being the proceeding in which the predecessor of Mr. Sherman was appointed, received in evidence and marked Plaintiff's Exhibit 3, and portions thereof read to the jury.

(Printed at page 126.)

Mr. Milburn: The paper which is designated the oath shows that it was sworn to by Mr. Allen Fitch and Mr. George Sherman on the 5th day of June, 1899, and is marked "Filed June 12, 1899."

Mr. Miller: I want to read it in the record, if the learned gentlemen will just allow me to have a minute (reading):

"New York Supreme Court, New York County. In the Matter of John Armstrong Chaloner. State of New York, County of New York, ss: David B. Ogden, Allen Fitch, George Sherman, herein appointed by writ, dated the 23rd day of May, 1899, being each duly sworn for himself says: That he will faithfully, honestly and impartially discharge the trust committed to him as Commis-
56 sioner in the above entitled matter. (Signed) David B. Ogden, Allen Fitch, George Sherman. *Signed* and subscribed to before me this the fifth day of June, 1899. William

White Whitaker, Notary Public, New York City. Certificate filed in New York County.

"New York Supreme Court, New York County. In the Matter of John Armstrong Chaloner, an alleged incompetent person. Oath of Commissioners. Jay & Candler, Attorneys for Petitioner, Office and Post Office Address, 48 Wall Street, New York City, New York. Filed June 12, 1899."

Mr. Milburn: I also produce the original precept issued by the Commissioners to the Sheriff to summon a jury; which is taken the 31st day of May, 1899, and is endorsed as received at the Sheriff's office, June 7, 2:36 P. M., 1899.

Mr. Miller continues the reading of Exhibit 3 to the jury, concluding with the words, "The case was then submitted to the jury."

PEDRO N. PIEDRA, being duly sworn as a witness on behalf of the plaintiff, testified as follows:

Direct examination by Mr. Miller:

My name is Pedro N. Piedra. I am a trained nurse. I have made a specialty in that line of mental and nervous cases. I have — a specialty of that character of cases since I left Bellevue Hospital, my first case was in 1899. For fifteen or sixteen years I have been a trained nurse in mental and nervous diseases. I was at Bellevue Hospital first. I have had other experience. Sometimes I have had a surgical case, or medical work like a typhoid
57 case or something like that, or paresis, or dementia, or paranoia like they claim here that he has, or something like that. I remained in Bellevue in that class of work for two years. We had what is called an insane pavilion, an alcoholic pavilion. When I left there I got my first case with Dr. Janeway. I had been working with him since I left Bellevue until he died. From the time I left Bellevue I worked with Dr. Story, and Dr. Peterson, and Dr. Hunt, Dr. Pierce L. Clark, Dr. Dana, and Dr. Lambert. I was employed in such a capacity at Bloomingdale Asylum. I was employed at Bloomingdale Asylum by Dr. Lyon, whom I met in a case—It was in the year 1899. I was employed taking care of Mr. Chaloner. His name was John Armstrong Chaloner. I was daily with Mr. Chaloner all day long from eight to eight for two months' time. I conversed with him every day. I took charge of his case around the month of May or around the month of June, 1899.

Q. Was Mr. John Armstrong Chaloner at any time when you were there serving in that capacity with him an insane person?

Mr. Choate: Objected to on the same grounds.

The Court: Sustained.

Mr. Miller: Before your Honor rules, assuming you rule it out, or do intend to rule it out, which I don't think you will after you have heard us fully, I would like to be heard. This goes to the 1899 proceedings, and this is just about the time that those proceedings before the Sheriff's jury were going on, and this man was not produced or given an opportunity to be heard. I am going

to prove by the man who had him in charge then who is
58 qualified to say, that he was not insane, just at the very time they were holding these proceedings. It was over the person and estate of an absolutely sane man. That certainly your Honor will not rule out.

The Court: I certainly will. I sustain the objection.

Mr. Miller: I except.

The Court: There are thousands and millions of people who were not called as witnesses. That is no reason why their evidence should be taken now.

Mr. Miller: My object is, your Honor, that the 1899 proceedings were also steeped in fraud, and that the reason they did not bring him down was because they knew *he* could show him sane if they brought him there. Does your Honor mean to say if they were sitting there in that manner trying in absentia a perfectly sane man, that he must not be allowed to stand in any other court of the land?

The Court: I sustain the objection.

Q. Have you attended upon other insane men?

A. Yes, sir, I have.

Q. How many of them?

Objected to on the same ground; objection sustained; exception to plaintiff.

Q. What was his physical condition at that time?

Objected to; objection sustained.

Q. Did you have any conversation with the doctor in charge?

A. Yes, sir.

Q. About the condition of Mr. Chaloner?

A. Yes, sir, I had.

59 Objected to; objection sustained; exception to plaintiff.

Mr. Choate: I move to strike out the answer.

The Court: Yes.

Mr. Miller: I except.

Q. Did you have any conversation with John Armstrong Chaloner in May, 1899?

Objected to; objection sustained.

Q. Did you observe his actions?

Mr. Choate: Same objection.

The Court: Same ruling.

Mr. Miller: Exception. Will your Honor permit me to examine this witness at all about any physical or mental condition of Mr. Chaloner at this time in May, 1899?

The Court: No.

Mr. Miller: The purpose of it, as I say, being to show that these proceedings were fraudulent; that the man was perfectly sane, and that they knew it, and that the doctors stated so to him.

The Court: I sustain objections to any questions put to any witness on the question as to whether in their opinion he was sane or

insane. The Supreme Court has tried that question and rendered a judgment on it, and that is the end of it.

Mr. Miller: I hope your Honor will give me a chance to be heard on the law on that before you throw me out of Court.

The Court: I will.

Mr. Miller: It is a very serious matter, and it goes to the vitals of the case, and I hope you will state to the jury now that you don't mean that remark as biasing them, but that you will charge
60 them as to that in due time. Will you allow me to bring out the conditions under which Mr. Chaloner was living at that time?

The Court: No. I can't tell until you ask your question. It does seem to me it is not of materiality unless you propose to show that he wished to come down to the hearing and was prevented by physical force or something of that kind, or prevented by the parties who were interested, or who brought the proceedings. I suppose if the people who brought this petition captured the man and locked him up and kept him away from being represented at the trial that would be evidence.

Mr. Miller: That is just exactly what they had already done in 1897, and kept him there a long time.

The Court: The evidence already tends to show, so far as it has gone, that he was free to come down.

Q. Did you have any conversation with the doctor in charge over you there about Mr. Chaloner being heard or examined anywhere?

Objected to; objection sustained; exception to plaintiff.

Mr. Miller: I offer the Virginia record, which the Circuit Court of Appeals says cannot be ignored in this case.

Mr. Choate: Objected to as immaterial.

The Court: Sustain the objection.

(See Stipulation, page 301.)

Mr. Miller: I, of course, except to that, but your Honor will allow me to be heard a little further, I am sure. The Circuit
61 Court of Appeals calls attention to the fact that they set this up affirmatively in their answer. The Circuit Court of Appeals has said that this petitioner must be given full faith and credit, and that he cannot be ignored in this case, and the Circuit Court of Appeals respectfully suggests to these gentlemen that they eliminate this from their consideration and they were given sixty days in which to do it, to simplify these issues, in which event they said they would not issue that writ of protection but they sought to rely on their answer, as they had drawn it and they have put it in issue. It seems to *be* that under that decision of the Circuit Court of Appeals, which says it cannot be ignored, your Honor will allow me to introduce that record, which the Circuit Court of Appeals says cannot be ignored, and which the Constitution of the United States says must be given full weight and credit, I call your Honor's attention in that connection to the fact that this action was not brought until after that Virginia decree, and that Mr. Sherman's appointment was not made until after that Virginia decree.

The Court: In my opinion the issue, which you speak of as being raised, is your claim that that decree is a valid decree establishing Mr. Chaloner's sanity. The other side say in their answer that it is an invalid decree, that it was collusive and is to be disregarded. In my opinion it is entirely immaterial in this case whether it is valid or whether it is invalid, because its only validity, its only materiality is on the question whether Mr. Chaloner is sane or insane, and in my opinion the question of whether he is
62 sane or insane now, or has been at any time in the past is an abstract question, and entirely immaterial to this case. The question is whether this plaintiff is entitled to recover the money that he sues for from Mr. Sherman, on the ground that he has converted it, that you have made a demand upon him for it, and he has not given it, that he has no legal right to retain it; but if he has a legal right to retain it and holds it under an order of the Supreme Court appointing him its officer to retain it, no other Court can authorize a judgment which will take it away from him. The Supreme Court of New York State is the only Court that can supersede the inquisition and restore the money and property to Mr. Chaloner, which it is presumed it would do as a matter of justice if he is now sane and entitled to the money, but there is no other Court in my opinion that can do it unless the action of the Supreme Court in appointing Mr. Sherman was a nullity.

Mr. Miller: It was, and I expect to show it.

The Court: You have given no evidence bearing on that point. I sustain this objection to the record of the Virginia Court, with all respect to the Virginia Court.

Mr. Miller: Your Honor, I will offer the order—the Virginia decree of sanity, and leave out the rest of it. I have been offering the full record, and having had it ruled out, and excepted to, I offer the decree of that Court. What I am offering is an exemplified copy under the laws of Congress.

Mr. Choate: Same objection.

The Court: I sustain the objection.

(See Stipulation, page 301.)

Mr. Miller: I offer to read the evidence of John Arm-
63 strong Chaloner, the plaintiff in this case, as bearing upon the question of his residence, as affecting the jurisdiction in this case, and also as bearing upon his residence in regard to the jurisdiction in the New York case.

Deposition of JOHN ARMSTRONG CHALONER, a witness for the plaintiff, read on behalf of the plaintiff, as follows:

My name is John Armstrong Chaloner, born the 10th day of October, 1862. I am the plaintiff in this case. I have not always gone by the name of John Armstrong Chaloner. My name at the commencement of this action was John Armstrong Chanler—Chanler being the corrupted form of the name Chaloner. My residence at the commencement of this action in 1904, was 'The Merry Mills,' Cobham, Albemarle County, Va. I afterwards transferred my residence, with a voter's certificate to Roanoke Rapids, Halifax County, North Carolina—the town owned by the Roanoke Rapids

Power Company, of which I owned the largest stock, and spent about fourteen or fifteen months in building, and when built I left.

Letter addressed to Mr. John Armstrong Chanler, dated July 13, 1905, signed by H. G. Mahanes, Registrar, Lindsays Precinct, stating that said registrar had that day erased from his registration book the name of John Armstrong Chanler, and made the following entry under the heading 'If transferred, when and to what precinct,' 'Roanoke Rapids, N. C., July 13th, 1905,' received in evidence and marked "Plaintiff's Exhibit 4."

(Printed at page 297.)

64 Certificate that John Armstrong Chanler was a registered and qualified voter in Albemarle County, Va., in October, 1902, dated July 11th, 1905, and signed by Frederick K. Page, received in evidence and marked "Plaintiff's Exhibit 5."

(Printed at page 298.)

My occupation or profession was that of Law writer and publicist; I might add lawyer (I pre-suppose that when I say law writer), member of the New York Bar, law writer and publicist. After my marriage, I lived at the home of my father-in-law, Col. Rives, at "Castle Hill," from 1888 until I went to Europe shortly before January, 1889, for a short trip and there spent a few weeks with one of my artist friends in this house which I still leased in Paris. I then returned and continued my residence at my then father-in-law's home until the Spring of 1889, when the present Princess Troubetzkoy and myself sailed to Europe for a trip of a duration of some years. We intended to stay there for some years, to educate her marked talent for painting. I remember that it was about that time in the Spring before the Paris season closes, it closing before the London season. While at Paris, we stopped at the house of the Dutch minister from the Netherlands to France, whose wife was a cousin of mine. We then went to London and spent the season there. In 1891 we returned to this country, after spending two years in Europe, during which time my then wife had perfected herself in the art of painting. In 1891 I began to push, if I may use that phrase, an art scheme, which is known as "The Paris Prize Art Fund." "The Paris Prize," founded by me in the Winter

65 of 1890-'91, is an exact counterpart of the Prix de Rome (the Prize of Rome) founded by Napoleon Bonaparte.

I was engaged in business in New York City. My residence at that time was The Everett House, Union Square, New York. I was there two years, 1892 to 1893 to 1894. I gave up my residence in the Everett House in 1894. My business was, as I have said, the law firm of Chanler, Maxwell & Phillip, and I used to once in a while, or rather frequently, once in two weeks, run down to Virginia, for the present Princess Troubetzkoy did not live in New York, although New York was my residence, and I voted there, but only voted once (for Cleveland in 1892). I was on the late William C. Whitney's private committee for raising money for the campaign, located in one of the parlors reserved for the campaign in the Hoffman House.

After giving up my residence at the Everett House in New York, I went to Virginia. I went South, but first went to Washington. I was then looking for the best town in the South for water power, cotton plantations and competition in transportation, by that I mean transporation facilities and nearness to the North, and during the Summer—no let me correct m-self, that was in the Summer of 1893—it was from 1893 to 1894 that we were investigating what is well known as the Roanoke Rapids Power Company's site; investigating it as to whether we should take it or not. We finally concluded to take it and the option was signed in the Winter of 1893-'94, as I remember it. We then took possession. I had bought a house, "The Merry Mills," at Cobham, Virginia, in the early Spring of 1894, just about the time I gave up my residence in New
66 York, I was there from 1892 to 1894. In 1894 I went South, and spent most of the time at "Castle Hill," and then bought "The Merry Mills" in the Spring of 1894, and in the late Summer of 1894 went to Europe; I say late Summer, I was only there about six weeks, started about the first of July and got back in August, six weeks in all, on a business trip. Then in 1895—well, prior to that, the present Princess Troubetskoi and myself had agreed to disagree, and to that end and to keep up appearances, I was living partly at "Castle Hill;" but the decision for divorce was taken before that time, that is, the year 1894, and she took the first step by going to Los Angeles on Friday, February fifteenth, 1895 (I remember that on account of the alliteration of the name, the number of times the letter F occurs in the date). On the same day I went to Petersburg and spent the night with Capt. W. Gordon McCabe (who then kept a school there—the most celebrated school in the South), the father of Mr. E. O. McCabe, who testified here yesterday. I spent the night there and the next day I went on to what is now Roanoke Rapids. I then took up my residence there, and assisted in the work of building this town, with Major Emry, who afterwards became the Managing Director, and I remained there until the latter part of April, 1896. The town was finished before that, but the reason that I did not go back and retake possession of my residence at "The Merry Mills" was out of a feeling of delicacy, for the reason that the Princess Troubetzkoy remarried early in the year 1896, January or February, and I did not wish to reopen talk until the couple had gone abroad, as I knew they intended to do. I also wished to allow sufficient time to elapse to prevent talk. The result was that
67 instead of going back early in 1895 to take up my residence at "The Merry Mills" as had been my intention, I did not go back until April, 1896. Mentally I took up my residence there in the early Fall of 1895; the Town of Roanoke Rapids had been built; my residence had then been removed from New York to a sort of floating existence; I gave up this room in the Everett House for good—I had it from about June, 1892, for about two years, not three, and not less than two, but just a month or so more than two years—I took up a sort of floating existence in the shape of not fixing any established residence.

My intention as to residence in 1894 was "The Merry Mills." I

bought that because of the differences between myself and the present Princess Troubetskoy. Therefore, during the interim before I could take up my residence there I went down and spent the time at Roanoke Rapids. Well, part of the time I was in Europe in 1894, and as I say I went down on February 15, 1895, to Roanoke Rapids, and took up my residence there.

I intended that to be my residence temporarily. I had enough of wandering. I intended to keep this as a habitat at Roanoke Rapids until I would take up my permanent residence at "The Merry Mills." I mentally took it up there; the same as Senator Platt took up his at Tioga, while he lived at New York City, and this thing, I understood, was purely a mental process and as you wished, so your residence was within reasonable limits. I, therefore, in the Fall of 1895, as soon as the real building at Roanoke Rapids was completed, I mentally retook up my residence at "The Merry Mill;" I physically took it up there in April, 1896. I took up my residence
68 there about the latter part of April, 1896—I took up my permanent residence there.

My residence in 1896 was here.

Mr. Miller: This deposition was taken at Charlottesville, Albemarle County, Virginia.

It was always here after my residence at Roanoke Rapids for eighteen months, but I split the residence in the Fall when the work was done at Roanoke Rapids. I wanted to take my residence here, but on account of the affair going on here (I knew there was going to be a marriage here about Christmas time), I was not able to do so.

As to the action I took on leaving New York in regard to my taxes, I had not paid my personal taxes in New York, with the single exception of paying on some $1,200 worth of furniture—that is of record, or should be. I went to the office of the Tax Collector in 1895. I came on from Roanoke Rapids specifically for that purpose. I was then down there running the town; it was all built, the factories and brick plant, etc., going. I came on to New York for a few days. They had charged me with considerable personal property tax, which was unjust, for I only had a few things stored there, worth in the neighborhood of $1,200 to $2,400. The official asked me who I was, and among other things said, "Are you the husband of Amelie Rives." This was just before the divorce was made public.

I smiled, and he said, "You write on the corner of this book
69 exactly what your residence is." I said, "My residence is at Roanoke Rapids, N. C." This was in 1895. That was before I took up this mental reservation, and before the divorce. I said, "My residence is at Roanoke Rapids, N. C. I have a law firm here in which I take practically no part." That is to say, I said I was a silent member of the firm (it should be technically, I understand, another expression non-active). I told him that I did not practice.

I wrote on the margin "My residence is at Roanoke Rapids, N. C.," because, as I say, the mental reservation was that my residence was to be at Roanoke Rapids until the divorce papers were granted between

the present Princess Troubetzkoy and myself, which was some time in September, 1895. I wrote "My residence is at Roanoke Rapids. I am a member of a law firm here, in which I'm only a silent partner, because my work is at Roanoke Rapids, where I have charge of various interests." Words to that effect. That was done in 1895. I can't give the exact language but I remember distinctly that was written in the corner of a large book. He promptly cut them down to $2,400 or $1,200, I don't recall which now, somewhere in that neighborhood. All these statements could be proved by reference to the books in the Tax Collector's office. My residence when I went to New York in February, 1897, was, here, at "The Merry Mills," Cobham, Albemarle County, Va. That has been my residence until the 13th of July, 1905, when I went to Roanoke Rapids, N. C., which is now my residence. This is my place of business, because I am now a professional writer.

It most certainly was my intention to stay permanently at "The Mery Mills," Cobham, Albemarle Co., Va., in February, 1897,
70 immediately prior to my going to New York with Mr. Stanford White. It was my permanent residence, and I intended to keep it so. I went to "The Merry Mills" and established my permanent residence there in the latter part of April, 1896. I stayed at Roanoke Rapids from Friday, the 15th of February, 1895, to the latter part of April, 1896. I remember that date because I put the present Princess Troubetzkoy on the train for the West on that day. I changed my residence officially from "The Merry Mills," Va., to Roanoke Rapids, N. C., on the 13th of July, 1895. There were practically a period during which I claim that my residence was in Albemarle County, Virginia, for a period of ten years, barring a certain period of time when I was in New York. I regarded it as my residence.

"Q. Was the work of building up the Town of Roanoke Rapids completed under your supervision in 1896?"

Objected to as immaterial: objection sustained; exception to plaintiff.

As to my trips to New York from 1895 to March, 1897, I took this trip the Fourth of July, and the one in September, 1895, to protect my property on account of being overtaxed, and I took one more trip to the Horse Show during the Horse Show week. I might add that regarding the year 1894, to show why I was so to speak, moving around, I owned a large piece of property, a 2,700 acre piece of property, known as "Hawkwood," in Louisa County, Va. In October, 1894, I bought this enormous estate of 2,700 acres, with a brick house built before the war, at a cost of $15,000 or $20,000 to
71 build when new. I bought that in 1894 and spent a large portion of my time there, and I started gradually into the business of raising, or training, jumping horses. I am very fond of riding and more than fond of hunting. This house was owned by the late Mr. Richard O. Morris. It was located in Louisa County, Va., about 8 miles from Cobham, a nearer station to it being Poindexter. I got this at a song. The property had got heavily in

debt. There was $13,000 of debt on it. The panic of 1893 was still weighing the country down, and the house was to be sold in the Fall.

The debtors were crowding around, and it was bound to be sold. I was told this, and I thought it was a pitiful state of affairs, that these gentlemen, whose ancestors had gotten the grant to this property from the King, should have it sold over their head. This is somewhat like a novel. However, it was going to be sold. I bought it on a mortgage. I paid $13,000 in cash and gave a mortgage for the balance for ten years, backing my knowledge about real estate. I felt that by that time, 1904, for instance, it would be a big thing.

"64th Q. What was the amount of your investment? A. The amount was actually in cash $13,000, the balance, which was on interest, was $12,000, the interest being $720 a year."

"65 Q. What is the general market value of the property at the present time? A. It was bought, under circumstances to be hereafter explained, by a rich Pittsburgher, and he did not pay anything like its value for it—I will tell you what he paid for it later. Five years ago he valued it at $80,000. He had made his money by hard knocks and work.

72 "66th Q. What is a fair market value for the property in your opinion? A. In my opinion, it was then worth what he valued it at, and since then a railroad has been built within a half mile of his door and increased the value of the property."

"67th Q. In your opinion, a fair market value was $80,000?"

Mr. Milburn: Is this material, your Honor?

Mr. Miller: Yes, sir, it bears upon his property.

The Court: I will sustain the objection to anything further about that.

Mr. Choate: Will that cover questions 64, 65, 66 and 67, the questions and answers?

The Court: I will strike out the 64th answer, from that time on, I will grant the motion to strike it out.

Mr. Miller: I except.

On the morning of February 13th, 1897, I was at "Merry Mills," Cobham, Albemarle County, Virginia.

"Q. Who was your family physician at that time?"

Mr. Choate: That is utterly immaterial.

Mr. Miller: Oh, no, your Honor, they have set up the defense that the man was taken away because of his physical condition, by his family, and all that sort of thing. I expect to show that they never even consulted his family physician as to what his condition was. At any rate it is part of the history of his being taken away from there at that time, which goes to the validity of the proceedings they had in New York upon luring him up here. I

73 don't see how you can divorce this as bearing upon the history of his coming to New York, the way they brought

him to New York. If it is a matter of his health, it is certainly a question to go to the jury as to why they did not go to see his family physician down there.

The Court: It might be admissible on the question of what his residence was at this time, but I doubt whether it is material where his residence was. If he was in fact in the City of New York when this proceeding for the appointment of a committee was begun, as I understand it, the Supreme Court had jurisdiction, whether he resided here or did not reside here.

Mr. Miller: Your Honor must hear me on that subject before you rule, because it is a vital question.

Mr. Milburn: Or that he had property here that gave jurisdiction to the Court.

The Court: If a man is traveling and arrives here from Europe, for instance, and is taken insane or is charged with being insane, at a hotel here, the Supreme Court, as successor to the Chancellor, has jurisdiction to take proper proceedings which are necessary in the case of an insane person.

Mr. Miller: I think your Honor is laboring under some misapprehension on that subject. If it can be shown to the satisfaction of the jury that he was lured into the State for the purpose of being thrown into Bloomingdale, the proceedings upon which he was thrown into Bloomingdale are void upon their face and have no force and effect in any Court in the country. I want to submit authorities on that.

74 The Court: It is not necessary to discuss it. Mr. Sherman is not responsible for the acts of those who put him in Bloomingdale.

Mr. Miller: But that is the manner in which the Court got jurisdiction of him. He could not have gotten a residence during the three or four years he was in Bloomingdale. If he was lured here for the purpose of throwing him into Bloomingdale, the three years in duress in Bloomingdale did not give him a residence. They got jurisdiction over him in this proceeding—if they lured him here and committed him—and the 1899 proceedings involve both proceedings, as shown in the record, they could never get jurisdiction over him by keeping him in duress in Bloomingdale. The thing falls at its inception if they lured him here to get jurisdiction over him to make that judgment. We might just as well stop right here and go into that question. The commitment proceedings we contend were void for several reasons. There was fraud and trickery in luring the plaintiff, John Armstrong Chaloner, a resident of Virginia——

The Court: I don't care to hear that discussed. I will assume for the purpose of this case that he was lured. The man is physically there. The proceedings started to have him adjudicated a lunatic by a proper proceeding on an inquisition. The question is, are those proceedings void, it is not whether the order of Judge Gildersleeve, on Dr. Starr's certificate taking him to the asylum is void.

Mr. Miller: We contend, and our fight here this morning will be to show that the 1899 proceedings on which the commitment was

had were absolutely void. In order to show that the very
75 first principle is that they must have jurisdiction over this man. If they lured him from his home in another state for the purpose of getting this State's Court jurisdiction over him, and if we show that they never would have had that jurisdiction over him in 1899 except from that luring, then the 1899 proceedings of course must fall. They have nothing to stand upon. He was a resident of the State of Virginia when they lured him away, and he did not acquire a residence in New York by being confined in Bloomingdale.

The Court: He is physically there.

Mr. Miller: But it was the circumstances of fraud and trickery which gave the State Court jurisdiction of his person which we attack here, and are trying to show, and if they got that man under the jurisdiction of that Court in 1899, by fraud and trickery, why then the whole thing is void, and it is my purpose to show that.

The Court: I do not think it is material. If they brought him here—assume your case, that they lured him here, got him to come here for the purpose of taking some kind of proceedings against him, the fact that he is here, that it is charged that he is insane, and that thereupon a proper proceeding is taken in the Supreme Court which results in a judgment that he is insane, that judgment is perfectly valid no matter how he was brought here.

Mr. Miller: No, sir, your Honor, because the first proposition is that they must get jurisdiction over the man, and if they only got jurisdiction by fraud and by trickery, by luring him from his home State, and only got jurisdiction over him in 1899 by that process, it is void.

76 The Court: That would be so if it were a suit to recover money on a debt. This judgment determines the status, determines the condition of the man's sanity or insanity, and that is a fact which does not depend on how you get the man within reach of the Court, in my opinion.

Mr. Miller: There have been several errors made by lower courts in this case which have been unanimously reversed by the Court of Appeals. We don't want to have that happen here. I refer to the case of Carpenter v. Spooner, N. Y. Superior Court Reporter, page 717:

"This Court will not sanction any attempts, by fraud or misrepresentation, to bring a party within its jurisdiction. Where a party, having been induced by a false statement to come within the jurisdiction of the Court for the purpose of effecting service upon him, was then served with a summons and complaint in an action in this Court, the service was, on motion, set aside."

The Court: That is perfectly familiar law. This was an action for libel. If in a suit for tort, or a suit on a contract, a party is fraudulently drawn within the jurisdiction, the summons will be set aside on motion.

Mr. Miller: Would you mean to take the position—I don't mean to say it in any disrespectful way, that if you can not get jurisdiction over a man's $25 debt by trickery and by fraud, that you can lure

him into a State and take ex parte proceedings, without notice to him, and throw him into an asylum, deprive him thereby of his liberty for an indefinite period, probably for life, and of all of his property thereafter, as part of a conspiracy, that the Court would dismiss the complaint and the whole proceeding, because it had gotten the summons on him in the case of a $25 debt, and would let it stand if he had been deprived of his liberty for life and his millions of property? That goes to the very essence of our liberty, the due process of law, and everything else involved.

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The Court: The provisions of law providing for proceedings to determine the status of a man who is suspected of being insane, are for the benefit of nobody in the direct sense.

Mr. Miller: They ought to be.

The Court: Ought to be. It is for the protection of society or for the protection of the man himself. No matter how he comes to any particular place, how he is brought or by what fraudulent means he is brought there, if it be claimed or suspected that he is insane, has lost his reason, in which case there is always in the first place, danger of his injuring other people, danger of his injuring himself, danger of his squandering his property—in other words, a person who deserves the care and protection of the Courts, and who has suffered a terrible calamity; but under those circumstances it does not make any difference how he got where he is, it is the duty of the Court, if the question is properly brought before it, the proper Court, to inquire into his condition, and if it finds that he is in this condition, to take proper steps to protect him and the community, and his property.

Mr. Miller: But the proper place to do that is in the proper Court, the Court of his home jurisdiction, and not lure him away from his residence and get jurisdiction of him by a conspiracy when the Court would not otherwise have it.

The Court: I don't think so at all. It is the proper duty of the Court in the place where he is, for the protection of the community where he is and for his own protection, immediately on the spot, and not to say that no Court can deal with an insane man excepting the Court where he lives. A gentleman comes here from France and becomes insane in New York, nothing can be done until he goes back to France? That is not my view of what the law is.

78

Mr. Miller: You don't think that a principle of law applying to a $25 debt is good enough to apply to a man who has been adjudged to lose his liberty and property without trial. I cannot see how due process of law can apply in that way. I except.

"Q. Did you receive a letter or telegram from Stanford White in February, 1897?"

Objected to as immaterial; objection sustained; exception to plaintiff.

The Court: Mr. Miller, in order to protect your rights, I think if you have one exception on a line of evidence for the purpose of appeal it is just as good as if you have 50. It seems to me that you

might, if you wish, make an offer. Any testimony that you wish to offer in regard to the question of the sanity of Mr. Chaloner, I shall exclude. Any evidence that you wish to offer tending to show that he was lured into this State, I shall exclude, if that is the only object of the testimony.

Mr. Miller: And that he was a resident of another State?

The Court: No. The fact that he is a resident of another State, when the suit was brought, seems to me to be proper on the
79 question of citizenship; but the question, so far as the validity of the proceedings to have him adjudicated a lunatic is concerned, is, in my opinion, entirely immaterial, entirely immaterial as to what State he was a resident of. If he was not here as a matter of fact, or if it goes to show that he was not in Bloomingdale, or that Bloomingdale was not situated within the jurisdiction of the Court, that would be material, but the fact that he was not at the time a resident of this State, or that he was a resident of some other State, so far as the validity of the proceedings to adjudicate him a lunatic is concerned, is immaterial.

Mr. Miller: That is the purpose of the evidence, and I offer all the evidence along that line in this case.

The Court: I exclude it.

Mr. Miller: And in my bill of exceptions if I have to go up, that can be incorporated?

The Court: I think you should only put into the record—you have offered specific cases enough to raise the point. You offer generally to go on and prove the subject, and I say I will not allow any evidence to be taken. That is all you want on the record. One exception on appeal is just as good as a hundred on the same point.

Mr. Miller: Exception.

If your Honor please, we will show you that this whole proceeding, which embodies both records, the 1899 proceeding, is void on its face, for twenty odd other fundamental reasons, which involved due process of law.

The Court: If it is on its face it is in the record already, and you can argue that when you get all your evidence in. Finish your evidence and rest, and when you get through I will hear you.

80 Mr. Miller: I want to offer, of course, all the evidence which we have in the record here bearing upon the question of the plaintiff's sanity and business capacity at all the times mentioned here in the complaint. I take it it will not be necessary for me to read or re-read the names.

Mr. Choate: What is that?

Mr. Miller: I offer all the balance of the evidence taken in this case bearing upon the question of the sanity or business capacity of the plaintiff here. If you want me to read it I will do so.

Mr. Choate: That is not a proper offer, because we cannot tell what is in it, what he may consider in that mass of five volumes as bearing on that question. We have no objection to his offering to prove.

The Court: Undoubtedly if they desire it you will have to point out what you offer.

Mr. Choate: Of course, I don't desire to put the Court in the absurd position of listening to all that.

The Court: I should think it would be clear enough in the record, what does bear purely and simply on the question of insanity.

Mr. Choate: Would not the rights of all the parties be protected by an offer to prove on Mr. Miller's part?

The Court: I should think, Mr. Miller, if you offer to give evidence tending to prove, as you claim, that Mr. Chaloner is sane and always has been sane, that that would meet the case.

Mr. Miller: And that all the proceedings against him were by virtue of fraud and conspiracy.

The Court: That is rather large.

Mr. Miller: And that, of course, relating to all of the depositions which we offer here, which have been opened in this case
81 by order of the Court. I can read them if they want me to read them, but I don't want to do that unnecessarily. Is that satisfactory?

Mr. Milburn: I would like to deal with one question at a time. As I understand, counsel offers evidence in the depositions to show that Mr. Chanler is sane, and always has been a sane man, and we object to that, and the Court excludes all that testimony on the ground that it has no materiality, and there is an exception on their side. Now, that must settle that point.

The Court: Yes.

Deposition of JOHN B. DICKINSON, a witness on behalf of the plaintiff, taken at Charlottesville, Albemarle County, Virginia, on the 14th day of October, 1908, read on behalf of the plaintiff, as follows:

My name is John Byvancke Dickinson, 38. I now reside at Hamilton, Bermuda. My profession is the practice of medicine. I got my professional education at Richmond, Va. I have been practicing medicine 15 years. I have made a specialty of the eyes, ears, nose and throat for 10 years. During those 10 years I have practiced 2 years in Columbus Ohio, 8 years in Bermuda. I am now in active practice. In addition to my private practice I do work for the English Navy and English Army—R. N. and R. A. M. C. I have known the plaintiff in this case intimately, that is, well acquainted with him, for about 15 years. I have seen quite a good deal of the plaintiff in the last month.

82 "Q. Please state what is the present color of the plaintiff's eyes?"

Mr. Choate: That is objected to as incompetent, immaterial and irrelevant.

Mr. Miller: I offer it to contradict the evidence, and to show that the evidence of the alienist upon which the man was committed was false and perjurious and fraudulent, bearing upon the bona fides, and that it deceived and misled the Court.

The Court: I will sustain the objection. You should have given that evidence on the trial of the case.

Mr. Miller: We had no notice or opportunity to do anything at either hearing.

The Court: We cannot try over here again, in my opinion, the question which was tried before the Sheriff's jury.

Mr. Miller: I except to that.

Mr. Miller: I offer specifically in evidence the testimony of Winthrop Astor Chanler, taken by the defense in this case, in support of our contention that the proceedings were fraudulent and that the defendant was lured into the State for the purpose of getting jurisdiction over him for these judgments.

Mr. Choate: We object to it as immaterial and irrelevant, within the ruling of your Honor.

Mr. Miller: Your Honor, this is their own deposition, taken on their own motion.

The Court: Anything in it which tends to prove anything which is open to proof in the case I will take, of course. You say, as I understand it, that it was offered in support of your claim that Mr. Chaloner was lured into the State. Now, I hold that
83 any evidence upon that question is immaterial, whether he was or was not. We may assume that he was, for the purposes of this case.

Mr. Miller: I except to your Honor's ruling, if your Honor please, and for the purpose of getting the record to conform to the demands of the technical gentleman on the other side, I will have to read some of the questions and answers in this deposition, I guess.

Mr. Milburn: I am not making any demands.

Mr. Miller: I will read from page 8 of the deposition of Winthrop Astor Chanler:

"Q. Where did your brother live during the time that he was engaged in the practice of law, either as a member of the firm of Chanler, Maxwell & Phillip, or of Chanler & Phillip?"

Objected to as immaterial; objection sustained; exception to plaintiff.

"Q. No, but do you know whether they occupied a house in Virginia? A. I know that they stayed there with her father, at her father's house, and she was there most of the time.

"Q. You mean you do not know anything about it? A. I mean that is all I know about it. He was in New York a great deal—most of the time, I should say. I want to make it plain, that I know very little about his movements in that way. His wife was an invalid immediately after they were married, and she rarely left Virginia. Sometimes they would go on visits, possibly to Newport, and stay with friends in New England, or here in New York, and sometimes be up at Barrytown. But I could not tell you what his residence was.
84 "Q. What did you do subsequent to reading the letters which had been received from Virginia and which you had read?"

Objected to as immaterial; objection sustained; exception to plaintiff.

"Q. What else did you do, Mr. Chanler?"

Objected to; objection sustained; exception to plaintiff.

"Q. Did Stanford White or Dr. Fuller go down to Virginia at about the same time?"

Objected to; objection sustained; exception to plaintiff.

"Q. You don't remember whether you went with them or not?"

Objected to; objection sustained; exception to plaintiff.

"Q. What is your best recollection upon the subject?"

Objected to; objection sustained; exception to plaintiff.

"Q. Did you see your brother on that occasion?"

Objected to; objection sustained; exception to plaintiff.

"Q. Did you see him at any time on that trip to Virginia?"

Objected to; objection sustained; exception to plaintiff.

"Q. Who was with him?"

85 Objected to; objection sustained; exception to plaintiff.

"Q. Do you know whether they got on the train that you were on?"

Objected to; objection sustained; exception to plaintiff.

"Q. Do you know where they went?"

Objected to; objection sustained; exception to plaintiff.

"Q. Did you see your brother after that?"

Objected to; objection sustained; exception to plaintiff.

"Q. What is the value of the real and personal property of the company, to the best of your judgment? By the way, are you an officer of the company?"

Mr. Miller: That refers to the United Industrial Company.

Objected to as immaterial and irrelevant; objection sustained; exception to plaintiff.

"Q. What is your position?"

Mr. Choate: Objected to as incompetent, immaterial and irrelevant.

The Court: I don't know about that previous question. If you should be entitled to recover, the jury should know what the value of the property is. If you gentlemen cannot agree as to what the value of the property is, he should be allowed to give proof of what it is.

Mr. Choate: My contention is that at the present time there
86 is no evidence which would justify proof of damages.

Mr. Miller: My contention here is that there are twenty-five fundamental reasons which make this void.

The Court: I think you should stipulate what the value of this property is, or else I shall admit evidence about the value of it.

Mr. Miller: I am perfectly willing to do that.

The Court: I suppose Mr. Sherman knows what property he has in hand. If the plaintiff is entitled to recover at all he is entitled to recover all he has, I take it.

Mr. Choate: All that he had at the time of the complaint, the value of it at that time.

The Court: I suppose it would be a matter of accounting, and they can decide that here, perhaps. He would be entitled to compensation and all that, probably. I will take evidence of the value.

Mr. Milburn: Suppose we take that up later. We can make an effort to stipulate as to value.

The Court: Wasn't there in the depositions taken a copy of the inventory, filed, which shows what the property was? Why don't you put that in evidence?

Mr. Miller: Is it understood that the inventory showing the property that came into your hands—that you will stipulate that that will be the subject matter of the judgment here, if the jury has it to consider?

Mr. Choate: That depends on the date of the conversion, if any be proved.

Mr. Miller: I am willing to stipulate with you that the amount of money which had been received into the hands of Mr. Sherman, or his predecessor, from the estate of John Armstrong Chan-
87 ler, on April 4, 1904, the date of the demand, shall be the amount involved in this suit.

Mr. Choate: I cannot enter into a stipulation now, because I am not familiar enough with the facts. The accounts have been judicially settled, which undoubtedly are correct, and we would like to rest on them, only they do not cover the value of some of the stocks, which are of uncertain value.

When I say "we" and "us" I refer to the United Industrial Company. I am an officer of the company. I am President of the company. It has two mortgages on it, one for $16,000, of which I sold half, and my brother, J. A. Chanler, the other half. The second mortgage held by him, or by Mr. Sherman, his committee. I forget the exact sum, but it is something between $30,000 and $40,000. That mortgage for $35,112.64 is dated on or about September 15, 1898. I think so. That may have the interest added to it—I do not know—the sum you mention. I have not had any appraisal of it made. The mill is at present leased to the Carolina Fibre Company, of South Carolina, I think, for a certain sum. They have an option to buy it in, I think, five years, at $100,000. The present lease does not pay the mortgage interest. In my judgment $100,000 is a fair valuation of the property of the company. It is cheap at $100,000. $100,000 was originally the capital stock of the company.

I am not perfectly sure of my figures, but I think there are 2,000 acres of real estate. I am not now certain without referring to the

books. Of the entire real property that we put into it, there
88 is the canal, the power that that produces now, the rent from the farm, the rent from the mills there now—there is some personal property, money in the bank. How much at this moment I do not know. I should say there is $1,000. I am not able to say if there is $2,000 without consulting the President. I could get some information from Mr. Sherman. Mr. Sherman is not a Director. Mr. Sherman has not taken any active part in the management of this company. He has never been represented on the Board as long as I have had anything to do with it on the Board. He has voted on the stock as a committee. He has, by giving me power of attorney to vote. I voted it for him. The Roanoke Rapids Power Company have never paid any dividends. I have been Treasurer, I think, almost since the beginning of the thing. It was begun at the same time the United Industrial Company was started. That was in '95, I think, or something like that. I can't give you the exact date. That was while my brother was living down South; lived down there that one Winter; he was the resident Director. He was the resident Director at Roanoke Rapids, I should think; he was there for the Winter. We all bought houses and built houses down there, and leased them out. He had several he lived in when he used to go down there from here. The Merry Mills is a farm at Cobham, Virginia. My brother owns it. I don't know how long he has owned it. I have never been there.

"Q. You never visited you brother? A. He has never asked me to."

Mr. Milburn: I object to that question and ask to have the
89 answer stricken out.

The Court: Objection sustained and answer stricken out.

Mr. Miller: Exception.

"Q. How long is it that you have been estranged?"

Mr. Choate: Objected to.

The Court: Objection sustained.

Mr. Miller: I offer that also as bearing upon one of the motives back of the conspiracy and the luring.

The Court: I sustain the objection still more strongly on that ground.

Mr. Miller: I except.

Juror No. 1: Who is being questioned?

Mr. Miller: Winthrop Astor Chanler, a brother who signed the petition to throw him into the lunatic asylum.

"Q. You have never gone of your own accord?"

Objected to; objection sustained; exception to plaintiff.

"Q. Never sought an invitation?"

Objected to; objection sustained; exception to plaintiff.

"Q. You have had quarrels with your brother, haven't you?"

Objected to; objection sustained; exception to plaintiff.

I was once President of this United Industrial Company,
90 when it was first started, I am not sure of the date. He kicked me out, if that is what you mean. He insisted upon my resignation. He always had control of the company.

"Q. And that was at that meeting at the Kensington Hotel to which you have referred in your direct examination as taking place in December, 1896, wasn't it? A. December or January, but I am not certain of the date. My impression was it was in December, sometime before or after Christmas Day—may have been after the New Year.

"Q. Was there an altercation between you at that meeting at which he kicked you out, as you say?"

Objected to; objection sustained; exception to plaintiff.

"Q. Well, wasn't there some quarrel between you with reference to a suggestion that the plaintiff made about an examination of the books of your father's estate?"

Objected to; objection sustained; exception to plaintiff.

"Q. And that was about this time of this meeting?"

Objected to; objection sustained; exception to plaintiff.

"Q. Will you tell us what you remember of that?"

Objected to; objection sustained; exception to plaintiff.

"Q. Who was your co-Executor? A. My brother Lewis.
91 My brother never qualified. He was appointed, but he never qualified.

"Q. Lewis is the other petitioner?"

Objected to; objection sustained; exception to plaintiff.

"Q. Wasn't there really a good deal of ill feeling between all the members of your family, on the one hand, and John Armstrong Chanler, on the other, ever since his marriage?"

Objected to; objection sustained; exception to plaintiff.

"Q. Wasn't there considerable complaint among your brothers and sisters that they were not invited to his wedding?"

Objected to; objection sustained; exception to plaintiff.

"Q. Didn't you yourself write—"

Objected to; objection sustained; exception to plaintiff.

"Q. Well, how many of you felt that way?"

Objected to; objection sustained; exception to plaintiff.

"Q. Then you estimate that $200,000 would be the full value of all the property that the Roanoke Rapids Power Company owns—— A. I mean if anybody paid that price for it they would be getting a very cheap piece of property. It is worth a great deal more than that. I have no intention of selling out my stock in it; in fact, I am just about to put more money in it."

That is not what the property was worth when Mr. Sher-
92 man was appointed committee. It has increased in value very much. I should say, in June, 1897, it was a wilderness; there was nothing there but the power canal dug. It was a wilderness when we went there first. That was after my brother was up here. There was nothing there but two mills of the Roanoke Mills Company, which were put up by the southern end of the concern. Half of the Roanoke Rapids Power Company belongs to certain Southern people and half belongs to my family. We each had to put up a mill, according to our agreement. They put up a mill which has paid enormously and is going on right along, that has its own cottages, its own stores, and like that. It has, from time to time, leased—the people that come to live there lease our cottages. And the only other mill there was the United Industrial Company. Our cottages have always been rented when that was running, and when it was not running a good many would be vacant, because the help would leave. There was a lawsuit in North Carolina or Virginia about this Roanoke Rapids Power Company property, in connection with the sale of the machinery. I do not know that there was a lawsuit; I do not know that it got as far as that. My brother got an injunction. That was in the Court of Halifax County, I think, North Carolina. That is the United Industrial Company; that was not the Roanoke Rapids Power Company; that has never had any lawsuit. There was a lawsuit against the United Industrial Company. The suit was against the United Industrial Company. It was brought by my brother, an injunction.

The injunction has not been dissolved yet. We are hoping
93 to get it done. I do not remember the title of that suit.

I can tell the circumstances. The machinery in the mill was deteriorating right along for want of use. It was a peculiar machinery, made for the knit goods trade. The mill had always been a failure in making knit goods. The offers that we had for the property—people coming and wanting to lease it, people wanting to buy, they had always said, 'We don't want your machinery.' So we decided that the best thing to do was to sell the machinery while it was still of some value, and get rid of it and have the empty mill standing there for a man to come in and put in his own. After a great deal of trouble we finally succeeded in getting a purchaser who gave us a round sum for it, $8,000—that was the best we could do, and as I was advised—we were advised all around, that it would be much better to do it, because otherwise it was junk, it would deteriorate and become junk. We sold it to this man, and he went down there with his workmen to remove it from the mill. My brother was informed of the proceeding and instructed an attorney in the neighborhood to get an injunction to stop it, stop the machinery from leaving the mill. We went down there and saw his lawyer, my brother's lawyer, and talked the thing over with him, with the result that my brother agreed to the machinery leaving the mill and the sale going through, on condition that the money for that purpose should be held by the Receivers appointed by the Court, one of whom was his lawyer and the other was ours. This

injunction was obtained quite recently, in June, 1905. I thought it was in the Autumn, but it was probably in the Spring. Oh,
94 yes, they held off, they let the stuff go through, providing we sent the money down there, and that was in October.

It is probably right that it was in October, 1904, that the injunction was obtained, and that it was made permanent June 20, 1905. I think now that the property of the United Industrial Company was cheap at $100,000. I did not think so at all except on account of the one thing we had there. I did not think that the mill was worth that or the land was worth that. We had the right to free water there, 500 horse power.

"Q. What is the equity worth, if the property is worth $100,000? A. Take off the mortgages, you mean?

"Q. Yes. A. Mortgages and other debts must run up to $60,000. I should say about $40,000.

The United Industrial Company has not increased in value. It has been a dead weight on the progress of the Roanoke Rapids Power Company. There has been certain deteriorations ever since the mill was closed. The mill was closed after June '97. It was while Mr. Stanford White was looking after my brother's property that these leases were made—both leases were made. There has been a constant decrease ever since the mill was closed. There has been a decrease since June, '99. The property of the United Industrial Company consists of the mill; I do not know that the United Industrial Company owns, as a company, any cottages. I am an officer of the United Industrial Company now. I was compelled to retire in December, '96.

95 "Q. Then your brother was committed to Bellevue Hospital?"

Objected to; objection sustained; exception to plaintiff.

"Q. And when did you again become an officer of the United Industrial?"

Objected to; objection sustained; exception to plaintiff.

My brother, J. A. Chanler, owns the controlling interest in the United Industrial Company. He owns a majority of all of the stock of the company.

"Q. Then you owe your presidency to the votes given by Mr. Sherman as committee?"

Objected to as immaterial; objection sustained; exception to plaintiff.

I know what has become of the second mortgage which was held by my brother at the time of his commitment. Mr. Sherman has it. It has not been foreclosed. No interest has been paid on the second mortgage. The first mortgage has never been foreclosed. No interest has been paid on it.

"Q. Do you know it has not been foreclosed?"

Objected to; objection sustained; exception to plaintiff.

I testified to the condition of 298 Broadway in the early part of

1899, that is to say, about the time I applied for the appointment of a committee. I examined that building, I have been over
96 the building. Been in it, I should say, at that time, and several times since gone in there to get things that were stored there. We have stored—the things from my brother's office were all taken up and stored there when his office was given up. My desk was in there for years. I do not think the present building was there at the time of his commitment to the asylum. I think it was built while he was in the asylum. Very likely my brother himself suggested the raising of a builder's lien for the purpose of building it. I do not know if that suggestion was made while he was in the asylum.

My brother told me about his mortgages. That conversation was prior to this meeting in December, '96, of which we have spoken. Not long prior. It might have been during those days that I saw him then. Long prior, too, I knew of the mortgages he made, more or less. Mortgages on his own property that he owned outright, that was not in the trust; 298 Broadway and the Third Avenue property, which he managed in his own office.

"Q. Did he tell you what he raised this money for?"

Mr. Milburn: I object to that. What is the materiality of conversations between these men?

Mr. Miller: I expect to show that he raised this money on this property to keep up the St. Margaret's Home for Girls, which was not the act of an insane man.

The Court: If that is the purpose, I sustain the objection.

Mr. Miller: Exception.

97 "Q. Well, did you criticise his raising the money to buy out your brother Robert?"

Objected to; objection sustained; exception to plaintiff.

"Q. Then, these mortgages were placed on the plaintiff's property for the purpose of making a purchase which you had suggested to him; is that so?"

Objected to; objection sustained; exception to plaintiff.

"Q. Did you ever see any power of attorney which Mr. Stanford White had from your brother after your brother was committed to the asylum?"

"A. To the best of my knowledge and belief, I did."

I do not know anything about that power of attorney. I may have seen it, but I had nothing to do with the making of it. To the best of my knowledge and belief, I saw it. I do not know when—around about that time. Mr. White showed it to me. At his office, probably. I do not know where. He may have shown it to me at Mr. Butler's office. I think he showed it to me because I have a strong recollection of the thing having been obtained at that time, while my brother was in the asylum at Bloomingdale. I did not suggest to Mr. White that he should obtain a power of attorney from my brother while my brother was in the asylum. I

do not know who did. I did not mention to Mr. Sherman any information that my brother had any household furniture, at the time when he was committed to the asylum. I do not know
98 whether he had any place in New York at that time where he kept household furniture. I don't know whether he had or not. I do not know how often he came to New York during five years prior to his commitment to the asylum. I can't tell what year he was in North Carolina or some State in the South, taking charge of the affairs of the United Industrial Company, or of the Roanoke Water Power Company, without looking it up. He was absent for one entire year, from New York, when he was abroad. When he was resident Director of one of those companies. He was absent for a year, to the best of my recollection it would have been in 1896, I should think. He was resident Director of the Roanoke Company. That was in the State of North Carolina. My brother's residence was in North Carolina, Roanoke Rapids, I think. I don't know when he changed from Roanoke Rapids to Merry Mills.

"Q. When did you and Mr. White and Fuller go South shortly prior to your brother's commitment—in what month?

Objected to; objection sustained; exception to plaintiff.

"Q. Your brother was committed March 10, 1897?"

Objected to; objection sustained; exception to plaintiff.

"Q. You retained Jay & Candler to conduct the proceedings, didn't you?"

Objected to; objection sustained; exception to plaintiff.

99 Q. And you consulted with them as to the witnesses to be produced, didn't you?"

Objected to; objection sustained; exception to plaintiff.

"Q. And didn't that question come up as to whether Hartnett ought not to be produced?"

Objected to; objection sustained; exception to plaintiff.

"Q. Has be been in your brother's, the plaintiff's employ at all since your brother was committed?

Objected to; objection sustained; exception to plaintiff.

The Court: The witness is Mr. Winthrop Chanler?

Mr. Miller: Yes, Winthrop Astor Chanler.

"Q. Didn't you say he kicked you out of the office of President of the United Industrial Company in December?"

Objected to as immaterial and irrelevant; objection sustained; exception to plaintifffff.

"Q. You were present at that inquisition and gave testimony, didn't you? A. Do you mean the Sheriff's Jury?

"Q. Yes. A. Yes."

I retained Jay & Candler to conduct the proceedings, and I suppose I consulted with them as to the witnesses to be produced.

"Q. Did you say he kicked you out of the office of President of the United Industrial Company in December?"

Mr. Choate: I think we had that before, and it was objected to and excluded.

The Court: This is something relating, as you claim, to the value of the property?

Mr. Miller: No, sir, my purpose in offering it is to show the motive and bad faith.

The Court: I will sustain the objection.

Mr. Miller: Exception.

"Q. Under those circumstances why didn't you send Lewis Chanler down there to investigate your brother's condition of health instead of going there yourself—wasn't Lewis more friendly to him than you?"

Objected to on the same ground; also on the ground that the question is defective in form; objection sustained; exception to plaintiff.

"Q. So that Mr. Carey had not seen your brother for at least two years prior to the time of commitment?"

Mr. Choate: Objected to on the same ground.

Mr. Miller: Mr. Carey was one of the three men who swore to the petition, and swore of their own knowledge he was acting queerly and doing all of those queer things in Virginia, and on the strength of these affidavits of Lewis Chanler and Winthrop Astor Chanler, the man was committed. He swore in the petitioning papers here that of his own knowledge this man was acting queerly down there and doing all of those queer things. Now, we are asking the
101 other petitioning party here if it is not a fact that this man Carey had not seen the man in two years?

Mr. Milburn: I object.

The Court: Sustained.

Mr. Miller: An exception.

"Q. You probably remember that in your application for your brother's commitment you and Mr. Lewis Chanler and Mr. Carey signed a petition in which you state that, 'Mr. John A. Chanler has for several months, while at his home in Virginia, been acting in a very erratic manner. He has limited himself to a peculiar diet; he has burned his hands by carrying hot coals in them; he has devised many peculiar schemes such as a roulette to beat Monte Carlo, and he has given as a reason of these and other acts that he is inspired by a spirit which directs him; for the past three weeks entirely he has constantly talked of these delusions; has neglected his health; has injured his person and has been at times highly excited,' and then all three of you sign an affidavit stating that you knew the contents of the foregoing petition, and that the same was true of your own knowledge, except as to the matters therein stated to be alleged on information and belief; and there are no matters in the petition which are stated on information and

belief; now I ask you how did you come to make that affidavit of these facts of your own knowledge?"

Objected to as immaterial and irrelevant; objection sustained; exception to plaintiff.

"Q. Do you remember that in your petition you did not state the name of a single one of the witnesses on whose report you claim to have acted?"

102 Same objection; objection sustained; exception to plaintiff.

"Q. And that the statements contained in this petition were very solemn statements?"

Same objection; objection sustained; exception to plaintiff.

"Q. And that you considered very carefully this statement, didn't you, 'Mr. J. A. Chanler has for several months while at his home in Virginia, been acting in a very erratic manner?' "

Same objection; objection sustained; exception to plaintiff.

"Q. Why did you speak of his home in Virginia? Did you know he had a home in Virginia? You call it a home? A. I didn't say I called it a home."

I didn't write the petition. I signed it and swore to it. I know what home means. I distinguish between home and residence in this way; My residence has been for past years in Newport, Rhode Island, where I have a house. I have been living two years in Geneseo, New York, in the Summers, and spend the Winters in New York City. I consider wherever I happen to be living as my home for the time.

I don't consider Newport my residence, because I rent the house and am away from it, and if people say, "Where do you live?" I would say in Geneseo. I vote in Newport and I am a Rhode Islander. I don't think there is any particular difference. I don't think home applies to residence in that sense.

103 I testified on my direct examination that my brother resided at various times in this place and in that place. I should say 'residence' is defined by a man's legal address where, if I have to sign a paper I put in my residence, and my residence is where I vote and pay personal taxes, I suppose. That is the way I look upon it. Where I now reside or now live may not be where I vote and pay taxes.

When I speak of residence I don't mean the place where a man votes and pays taxes. I don't say that. For instance, if I draw a will here in the City of New York, I would have to put in the will where I live, where I come from. If I sign a mortgage or transfer of property I would have to put in there up to this year when I had given up my residence, Newport Rhode Island, is the place where I come from, where I considered myself a citizen of.

I don't know where my brother ever voted or that he ever did vote.

I don't know where he paid taxes as a resident in 1895. I do not know that he swore before the Tax Commissioners of New York City that he was not a resident of this State in 1895. I do not know anything to the contrary. I do not know that he paid taxes as a resident in Virginia in the year 1895. I do not know anything to the contrary. I do not know that he did not pay taxes in Virginia. I do not know where he paid taxes or voted at any time prior to his commitment to the asylum.

"Q. But you do know where he made his home, because you swore to it here, didn't you? A. I swore to where he was living during that year."

104 I call it his home in that paper, yes. I used that word without a thought about it. I mean by calling it his home, where he was living at the time. I didn't know he was living there of my own knowledge. I swore of my own knowledge. I don't know what my own knowledge was. I can't say exactly that I honestly understand, after your cross examination, the difference between swearing to this of my own knowledge and swearing to them on information and belief. You ask me whether I know of my own knowledge he was living at Cobham. I say I saw him on the platform of what I think was the Cobham station, and he boarded the train with Stanford White and Dr. Fuller. I was on that train. That is the only knowledge that I had that he was living in Virginia.

I did not speak in Charlottesville at that time with Mr. Moon. I did not know him. I met him in this office, or in the office of the old firm (meaning Evarts, Chote & Beaman).

"Q. Was that when he was employed by Mr. Butler in connection with your brother's the plaintiff's, affairs? A. To the best of my recollection, yes."

Mr. Choate: I object.

The Court: Sustained.

Mr. Miller: The purpose of it is to show that Mr. Moon, the attorney at Charlottesville, Virginia, was the representative of this committee and had full notice, appeared in court and got an adjournment in the Virginia proceedings, and that they had full notice therefore of all the Virginia proceedings, and knew of the judgment reached prior to this committee's application or
105 appointment here, so that they were on full notice when they made the application for the appointment of Mr. Sherman that the motion——

The Court: I sustain the objection.

Mr. Miller: And also to follow it up by showing that Mr. Sherman did not give Mr. Chanler any notice or that none of the parties who were pleading for the application of the appointment of Mr. Sherman gave Mr. Chanler any notice of the application, though at the same time they knew he had been adjudged sane in Virginia weeks before. Your Honor still overrules it?

The Court: I exclude any evidence tending to show that.

Mr. Miller: An exception, please. I take it I can show later or by the record itself that they are void—I have the right to offer the Virginia record again.

"Q. Didn't he represent Mr. Butler in a certain proceeding in Louisa County, Virginia?"

Same objection; objection sustained; exception to plaintiff.

"Q. Do you know in what connection you met Mr. Moon in Mr. Butler's office?"

Same objection; objection sustained; exception to plaintiff.

"Q. And it was while that suit was pending?"

Same objection; objection sustained; exception to plaintiff.

The Court: I call your attention again to these thousands
106 of questions all tending to prove that Mr. Moon was down there in Virginia and knew about that. Now, if I exclude one of them, and that is recognized, you are just as well off as if you read all the rest.

Mr. Miller: I don't mean to be trespassing unnecessarily, but it is hard to get at just what I want in the great bulk of testimony here, although there are some things I don't want.

The Court: Because you have taken an enormous amount of testimony ought not to be a reason why it should have to be all read, page by page, when it all relates generally to a subject which the Court announces it will not allow any evidence to be given about.

Mr. Milburn: In the minutes this morning the very first question that was read, as I remember, was on page 8.

The Court: If you wish to add anything which the other side have not, hadn't you better put it in as part of your case?

Mr. Milburn: This is merely to call your Honor's attention to see if I am right about a ruling that was made. The question was, "Where did your brother live during the time he was engaged in the practice of law, whether as a member of the firm of Chanler, Maxwell & Phillip, or of Chanler & Phillip; where did he live?" Now, I am not clear in my recollection whether that was admitted in or whether it was excluded. It was the first thing put, and I think it should have been read, because your Honor has read everything about the residence.

The Court: I don't remember that it was read.

Mr. Milburn: I want to withdraw my objection to that
107 question, if I made one. I am willing that the answer to that question shall be read in now as though we hadn't objected to it.

The Court: Objection withdrawn.

Mr. Miller: I offer the whole deposition in evidence. It is your deposition. I offer it in evidence in its entirety.

The Court: Do you object to it?

Mr. Milburn: Yes.

The Court: I sustain the objection to it as a whole.

Mr. Miller: I take an exception to that, if your Honor please. (See Stipulation, page 301.)

Deposition of FREDERICK K. PAGE, a witness on behalf of the plaintiff, taken at Albemarle County, Virginia, the 14th day of October, 1908, read on behalf of the plaintiff (p. 175), as follows:

My name is Frederick K. Page, age 51. I reside near Cobham. I own an adjoining place to Mr. Chaloner's, the plaintiff in this case. My residence from his is about 500 yards, a quarter of a mile, north from his house. Just across the road from his house. I own that place. I owned that place in 1896 and 1897, when Mr. Chaloner went to New York. I was at home when he went to New York and prior to that time. I have been there all my life. I saw Mr. Chaloner quite frequently out riding and driving.

"Q. Did you see him prior to his going to New York?"

Mr. Choate: Same objection.

The Court: Sustained.

108 Mr. Miller: I want to show he was living there at his home at the time they took him away to New York. That it was his home and that they so all understood it. On the question of residence.

The Court: I sustain the objection.

Mr. Miller: An exception.

I can state whether Mr. John Armstrong Chaloner had ever voted in Virginia. I think he voted in 1902. He registered under the new constitution and voted for Hay, the candidate for Congress. I happen to know that because I was Chairman of the Registration Board. I knew that he voted in Virginia. I am quite positive it was 1902, or possibly '3. I know of my own knowledge where he lived in 1896 and up to February, 1897. He lived at Cobham, Albemarle County, Virginia. He lived there constantly, except for occasional trips or visits away.

Mr. Miller: Now, if your Honor please, I want to offer in evidence again—I am trying to avoid reading all of these documents—the depositions which have been taken in this case, in which both sides have been represented and which have been opened or published, so to speak, by order of this Court, of John Armstrong Chaloner and all of the others named, John B. Dickinson, Charles E. Dickinson, Lewis Block, John Penn Morris, F. M. Randolph, George W. Macon, George T. Munday, William C. Webb, C. R. Garner, William W. Johnson, William Kennie, A. D. Payne, A. G. Bell, Dr. Mann Page, E. O. McCabe, Frederick K. Page, J. A. Chisholm, L. C. Watts, Thomas W. Page, Micajah Woods, John Armstrong Chaloner,

109 Amelie Rives Troubetzkoy and Robert B. Shackleford.

The Court: Do you offer them as tending to show that Mr. Chaloner is sane?

Mr. Miller: Yes, among other things. The purpose for which I am going to offer all these depositions is to show that the proceedings of 1897 and 1899 in New York are void for, first, lack of juris-

diction, and on account of conspiracy and fraud; second, want of due process of law as having been sick, too sick to attend the 1899 proceedings and the proceedings being had there in absentia; third, to prove his sanity and competency at all times as applying to this case, and for that purpose I am going to offer all of these depositions without undertaking to read them unless these gentlemen want me to do it. Will that be satisfactory to these gentlemen?

The Court: They haven't objected.

Mr. Milburn: Certainly I do, to the tender of all of these depositions in evidence in bulk on a general statement of that kind to show that these proceedings are void for this reason and the other reason which he assigns there, on the ground that it is not proper. If he has got evidence on specific concrete subjects then we can pass on that, but to offer 2,500 of 3,000 pages of testimony and say, "I offer this to show that these proceedings are this, that, or the other—I never knew of such a thing in my life.

Mr. Miller: They will speak for themselves, and I am only trying to avoid reading these depositions.

The Court: Why don't you do it in the way it is ordinarily done. You offer to prove that the man is sane?

110 Mr. Miller: Yes.

The Court: Now, I say I will admit no evidence on that subject. You take your exception. You offer to prove that he was declared sane by this Court in Virginia?

Mr. Miller: Yes.

The Court: I refuse to take any evidence on that subject, as immaterial, and you take your exception. Now, is there any other specific point you offer to prove?

Mr. Miller: I offer all the depositions of these witnesses to prove the lack of jurisdiction and conspiracy and fraud, and, second, the want of due process of law in these proceedings, for the reasons I have already stated, and to prove his sanity and competency.

The Court: If you offer depositions then they must be offered in the way, if they object, which is the proper way. You cannot dump volumes and volumes of testimony into the case if the other side does not wish to have it introduced in that way. They have a right to look at each question and see whether they will make objections, and if you persist in offering the depositions, why, apparently we will have to sit here for a week or two. You will obtain exactly the same result if you would make it in the shape of an offer to prove, instead of offering the depositions, I think.

Mr. Miller: Well, I offer then to prove by these witnesses, or, if your Honor objects, I will leave out the words "by these witnesses," and offer to prove by evidence the lack of jurisdiction.

The Court: I shall allow you to put in any evidence. I
111 was not excluding any evidence tending to prove lack of jurisdiction. If you have any evidence on that point, produce it.

Mr. Miller: Then I offer evidence to show that the plaintiff here was at all times during these proceedings a citizen of the State of Virginia, and that this Court had no jurisdiction over him, and

that he was lured here for the purpose of getting him within the jurisdiction of this Court for the purpose afterwards carried out under the decrees.

The Court: I say I will take no evidence in support of those facts and you take an exception.

Mr. Miller: I except. I offer evidence to show want of due process of law.

The Court: That appears on the face of the record, doesn't it?

Mr. Miller: In addition I offer to prove otherwise than by the face of the record, and to prove by witnesses that at the time the so-called 1899 Sheriff's jury proceedings were had in New York City, the plaintiff here, who was the subject matter of that inquiry, was unable through physical disability to attend those proceedings; therefore, that they were had in absentia and that there was no real contest and that there was a fraud.

The Court: I will take no evidence in support of those allegations and you take an exception.

Mr. Miller: Exception.

I offer to introduce evidence proving that at the time he was committed in 1897, and at all times prior thereto and ever since he has been perfectly sane and competent.

The Court: I decline to accept any evidence on that subject. I shall rule out any evidence on that subject.

112 Mr. Miller: I except.

I offer in evidence particularly a letter written by John Armstrong Chaloner, the plaintiff in this case, to the Hon. Micajah Woods, dated, "Society of the New York Hospital, White Plains, July 3, 1897," in the handwriting as I expect to show of the plaintiff here, John Armstrong Chaloner, several months after his commitment, as being insane, to show under the Runk case, a decision of the Supreme Court of the United States, that by his own written documents at the time he was committed, he was a perfectly sane man.

Mr. Milburn: I object.

The Court: I sustain the objection.

Mr. Milburn: And also on the question of his intention as to his residence in the state of Virginia.

The Court: I sustain the objection.

Mr. Miller: I except to both rulings. I understand there is no objection raised here as to the manner of proof of this letter?

(Printed at page 305.)

Mr. Choate: We have your assurance that this is the letter of John Armstrong Chaloner, and that it was sent by him from Bloomingdale and received by Micajah Woods in the latter part of 1897?

Mr. Miller: Yes, sir.

Mr. Choate: We accept your assurance and stipulate to that effect, so that our objection is not on those grounds.

Mr. Miller: You object as incompetent, irrelevant and immaterial?

Mr. Choate: That it is irrelevant and immaterial.

113 Deposition of the Hon. MICAJAH WOODS, taken at Albemarle, Va., a witness on behalf of the plaintiff, read on behalf of the plaintiff, as follows:

My name is Micajah Woods, 64 years old. I reside in Charlottesville, Va. I am a lawyer by profession. I came to the bar in the Fall of 1868, 40 years ago. I have been continually in the active practice of law since that time. I have been Commonwealth's Attorney for the County of Albemarle, Virginia ever since December, 1870. My present term does not expire for three years. I am the President of the Virginia State Bar Association for this current year, 1908-9. I practice in the Circuit Courts of Virginia, a good many of them; I practice also in the Supreme Court of the State, and also practice in the Federal Court of the State. I think I have known the plaintiff, Mr. Chaloner, for 12 or 15 years. I knew him prior to February 13, 1897. I received a letter from the plaintiff in about October, 1897. The letter was brought to me by a New York lawyer by the name of Phillip, Mr. Phillip.

I knew the handwriting of the plaintiff in this case, Mr. John Armstrong Chaloner. I recognized the letter that I received at that time as the handwriting of Mr. John Armstrong Chaloner.

(Witness examines letter and states:) That is the letter that I received.

"Counsel for Plaintiff: I now file a letter, dated July 3rd, 1897,"—

Mr. Milburn: That is excluded.

Mr. Miller: Surely I am entitled to read the stipulation. (Reading:)

"It is stipulated that a copy of the above letter may be at-
114 tached in place of the original and the original withdrawn; the original, however, to be produced by counsel for the plaintiff upon the trial of this action."

Mr. Miller: Which we have done. That means that letter. The same stipulation is also made as to the other letters offered in evidence.

The Witness: I identify this letter as the letter I received in October, 1897. Brought me by Mr. Phillip from Mr. Chaloner.

"Q. Did you represent the plaintiff as attorney in the proceedings inquiring into the sanity of John Armstrong Chaloner, instituted in Albemarle County, Virginia, by C. Ruffin Randolph, on Sept. 20, 1901, which case was decided on Nov. 6, 1901?

Mr. Choate: That clearly is irrelevant under your Honor's ruling?

The Court: Yes, I sustain the objection.

Mr. Miller: Of course I except to your Honor's ruling, and at this point I offer again that record from Virginia. My purpose in doing this is to get on the record here in regular order the offer of that Virginia record which your Honor has ruled out, to which I except. I ask that it be marked for identification.

The Court: Mark it, Mr. Clerk.

Virginia record marked Plaintiff's Exhibit 7 of this date for identification.

(See Stipulation, page 301.)

"Q. Under what procedure and what law did C. Ruffin Randolph file his application against the plaintiff in the Albemarle
115 County, Virginia, proceedings in 1901?"

Same objection; objection sustained; exception to plaintiff.

Mr. Miller: I want to offer that portion of the letter to Major Micajah Woods which refers to the residence of the plaintiff.

The Court: If there is such a portion there I think I will take that.

Mr. Miller (reading):

"There can be no doubt about my residence being in Virginia, for in 1895 I went to the Commissioner of Taxes' office in the Stewart Building, corner Broadway and Chambers Street, and myself wrote, at his request, in the Tax Book a full description of my residence. It is, of course, there yet. It is to the effect that I was interested in a law firm in New York, but that I did not personally practice law in New York, as the business I had charge of was a manufacturing one in Roanoke Rapids, North Carolina, and that my home, 'The Merry Mills' where I lived, was at Cobham, Virginia. The object of the above visit was to fix the amount of my personal tax in New York. The amount fixed was $2500 (twenty-five hundred dollars). This took place in 1895, and neither the amount nor my address has since been changed."

FRANCIS LEE THURMAN, called as a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct examination by Mr. Miller:

My name is Dr. Francis Lee Thurman. I live at Keswick,
116 Virginia, in Albemarle County. I am a doctor and have been practicing medicine since 1894. I am a graduate of the University of Virginia. I know John Armstrong Chaloner, the plaintiff in this case. I am his family physician. As to his present physical condition and his ability to be at this trial, he is suffering now with some trouble with his spine, which seems to have been of considerable duration. He has simply a spinal irritation in the lower spinal region which affects a considerable area on each side of his spine. It seems to be a neuralgic condition and evidently gives him a good deal of pain, and after any trying ordeal, why he has to take a considerable rest to recuperate his condition. I have examined him recently. I advised him that it would be dangerous for him to appear here from physical reasons. Mr. Chaloner resides very near me. Six miles from my office.

Mr. Miller: I offer in evidence the inventories and the accounts of Mr. Sherman, the Trustee, in order to arrive at what has been received by him.

Mr. Milburn: I suppose they will be satisfied in this action as they have seen fit to bring this action, to confine it to the property at the time the suit was brought.

Mr. Miller: I offer in evidence at this point, copy of the accounting of Stanford White, to John Armstrong Chaloner, which forms a part of the papers in this report.

Objected to; objection sustained; exception to plaintiff.

Copy of inventory and account of Thomas T. Sherman as committee of the property of John Armstrong Chanler, dated and
117 sworn to December 1, 1903, and filed in the office of the Clerk of the County of New York the same day, received in evidence and marked Plaintiff's Exhibit 8.

Copy of statement of account of Stanford White as attorney in fact and custodian of the property of John Armstrong Chanler, from March 4, 1897, to July 6, 1899, marked for identification, Plaintiff's Exhibit 9.

Copy of inventory and account of Thomas T. Sherman as committee of the property of John Armstrong Chanler, dated and sworn to January 31, 1905, and filed in the office of the Clerk of the County of New York the same day, received in evidence and marked Plaintiff's Exhibit 10.

Mr. Miller: I ask for the account of Mr. Prescott Hall Butler showing what he turned over to Mr. Sherman.

Mr. Choate: The only accounts which we have from the point of view of Prescott Hall Butler receipts is an account which was rendered on behalf of his Executor in an accounting action in which his account was settled long after this. I don't think it can be material here.

Mr. Miller: If it covers what he received, I think it is material.

THOMAS T. SHERMAN, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct examination by Mr. Miller:

I was served with a subpœna duces tecum in this case. To produce, I think, the copies of account. This paper I hold in my hand
is an account or a report on this estate. It purports to be the
118 account of the Executors of Prescott Hall Butler, deceased, to the Supreme Court, rendered in an action in which I, individually and as committee of the person and property of John Armstrong Chanler, an incompetent person, was plaintiff, and John Armstrong Chanler, an incompetent person, Winthrop Astor Chanler, Elizabeth W. Chapman, Lewis S. Chanler, Margaret Livingston Chanler and Cornelia S. Butler, Charles H. Tweed and Allen W. Evarts, as Executors of will of Prescott Hall Butler, deceased, were defendants, and it is dated May 31, 1906, and it is signed by these Executors, but it is in typewriting, and it has several pencil notes upon it, which I will say were evidently made for the purpose of having something else copied from it. These pencil notes are not properly copies of the original account. They do not appear upon the accounting that I know of. They are not in my handwriting, and I think they were probably put in to make up for some other account; not of any other estate.

Q. Well, is there any objection to that going in, Mr. Sherman?

A. Without the pencil marks I see no objection. I believe it to be a correct copy of the original account, which I think is filed in that suit.

Mr. Miller: I offer that in evidence without the pencil marks.

Mr. Choate: We have no objection so far as it tends to show the property in the hands of Mr. Sherman at the time.

Above-mentioned account received in evidence and marked Plaintiff's Exhibit 11.

119 Q. What do you know about this document, Mr. Sherman?

Mr. Milburn: What is that?

Mr. Miller: The Stanford White report.

Mr. Milburn: We object.

The Court: Sustained.

Q. Is it a report showing what came into your hands?

A. I think not.

Mr. Miller: Your Honor has ruled, and I except. The amount of interest which we have had figured on the amount sued for here, subject to correction, of course, up to March 1, 1912, is $125,002.35. Will that be conceded, subject to correction?

Mr. Milburn: What sum is that? I am willing to admit that so much money at a certain per cent. for a certain length of time amounts to that much. That is all you want.

Mr. Miller: Yes, and that this is the amount sued for in the complaint; that the amount sued for in the complaint at 6 per cent. down to March 1, 1912, is so much.

The Court: Do you rest?

Mr. Miller: I rest, as to the evidence.

Mr. Choate: If your Honor please, then we move for the direction of a verdict for the defendant on the ground that the plaintiff has wholly failed to prove the cause of action alleged in the complaint, or any other cause of action, and in particular on the ground that the evidence shows that the defendant was the duly appointed committee of the plaintiff appointed by judgment of a competent court of general jurisdiction, having jurisdiction over the plaintiff and of the subject matter.

Mr. Miller: I oppose that motion, and want to be heard.

120 [Argument by Mr. Miller, for the plaintiff, in opposition to the defendant's motion for the direction of a verdict in favor of the defendant.]

The Court: There are three grounds, as I understand it, upon which it is claimed that this judgment was without jurisdiction, first, that the Commissioners were not sworn at the time the notice was signed. There is no question but that in this case all three of the Commissioners were sworn. In one of the cases that you have cited here, of Porter, or Bischoff, only two of the Commissioners were sworn. The other one never was sworn at all. In this case all the Commissioners were sworn before the notice was served. All that the alleged defect amounts to is that it was signed by the three Commissioners before they were sworn, but they were sworn before it was served upon anybody, and in my opinion, that meets the case.

The other point is that this proceeding took place out of the judicial district where the lunatic resided. The evidence in this

case shows that he resided in another State, Virginia, and that he was not a resident of New York, and the section of the Code provides that the petition must be presented at a Special Term held within the judicial district where the person alleged to be incompetent resides, or if he is not a resident of the State, where some of his property is situated. Now, it appears in the evidence that a great amount of his property was here in New York. It was more convenient, probably for all of the parties to bring the proceedings here, and it seems to me it is perfectly regular in that respect.

Mr. Miller: There is no evidence that we do own property in the other judicial departments.

121 The Court: This proceeding is brought here. The great bulk of his property is here, and the statute says if he does not reside in the State it may be brought where his property is situated.

Now, the other ground is, as I understand, that certain provisions of the Code are unconstitutional, because they permit a man to be committed to an insane asylum without notice. That refers to the proceeding that took place in his original commitment in 1897. Whether they were valid or invalid, in my opinion, is entirely immaterial in this case. I think there are numerous New York decisions to the effect that that provision of the Act is constitutional. Everybody knows, in fact, that there are plenty of instances arising all the time where a lunatic is so dangerous that immediate confinement is necessary. The statute provides that it may take place upon the certificate of two physicians, and the order of a Supreme Court Judge, and at all events in the absence of a decision by the Courts of this State to the e[illegible] that the Act was unconstitutional, I should hesitate to so hold. [illegible] if that question arose in this case I should hesitate to declare [illegible] unconstitutional. But in my opinion the fact that Mr [illegible]s taken in 1897 to the insane asylum under an ord[illegible]ut previous notice, has no effect upon the validity [illegible]ngs taken under the inquisition. These two cases tha[illegible] been cited are both cases of a direct application to the Court in w[illegible]h the adjudication was made, one a motion by the alleged lunatic who had been found to be one, to set the proceedings aside. That was a motion made directly to the Court that made the order confirming the inquisition. From the decision upon

122 it there was an appeal to the Appellate Division. The other is a direct appeal from the decision below to the Appellate Division. That is perfectly proper practice. Mr. Chaloner could have appealed from this decision. He could have made a motion to the Supreme Court to vacate the order if there was anything irregular about it. That is a very different proposition from going into another court and endeavoring to have that Court, by its judgment, hold that the judgment of another Court having full jurisdiction is erroneous. That is never permitted under any ordinary circumstances. The adjudication that has taken place in the Court having jurisdiction is conclusive upon all parties.

In my opinion there has been no case made out here at all to authorize a recovery.

The proceedings brought, which resulted in the — and having Mr. Butler appointed his committee, and the subsequent proceedings to appoint Mr. Sherman, seem to me to have been entirely lawful. If Mr. Chaloner in fact never was insane, or in fact, was insane, which must be presumed from the judgment, and has now recovered his sanity, which may occur in any case, why he has a perfect remedy to apply to the New York Supreme Court, which has his property in its custody, by one of its officers, to supersede the adjudication and restore his property to him. No other Court in my judgment, has any authority to do that, and therefore, in view of these circumstances, I direct a verdict for the defendant.

Mr. Miller: Your Honor will note an exception?

The Court: Certainly.

123 Mr. Miller: And allow the usual time to make up an appeal?

The Court: Certainly, sixty days, and a stay of execution of sixty days to make a case. There will be no execution except as to costs. I suppose the defendant is entitled to costs.

The Court: I direct a verdict in this case in favor of the defendant. The Clerk will so enter it in the minutes. That is all, gentlemen.

The jury, by direction of the Court, returned a verdict for the defendant.

The foregoing, together with the exhibits annexed thereto, constitute the testimony and statement of all the evidence introduced and offered upon the trial of this cause.

124 The plaintiff-in-error prays that the foregoing, its bill of exceptions, may be allowed, settled, and ordered on file.

WILLIAM D. REED,
Attorney for Plaintiff-in-Error.

The plaintiff-in-error's bill of exceptions on appeal in the above-entitled action is hereby settled in the form of the foregoing as between the parties thereto, and it is stipulated that the same may be settled in the form of the foregoing, by the judge before whom said action was tried.

Dated, New York, August 4, 1913.

WILLIAM D. REED,
Attorney for Plaintiff-in-Error.
EVARTS, CHOATE & SHERMAN,
Attorneys for Defendant-in-Error.

Upon the above stipulation the foregoing bill of exceptions is settled and allowed and ordered to be filed.

Dated, New York, October 15, 1913.

GEO. C. HOLT, *J.*

125 PLAINTIFF'S EXHIBIT 1.

Osborne & Hess, 27 William Street.

James W. Osborne.
Otto T. Hess.

Cable Address "Osborness."

Thomas W. Churchill.
William D. Reed.
Ernest W. Marlow.
James J. Fitzgerald.

NEW YORK, April 4th, 1904.

DEAR SIR: On behalf of our client, John Armstrong Chanler, we write to demand of you, pursuant to instructions from him, the delivery to us of all moneys, securities, title deeds and other property, principal and income, which you are withholding from him under color of certain alleged proceedings in which we are informed you claim to have been appointed a so-called committee. The failure on your part to respond to our demand at once will be construed on our part as a refusal to comply with his demand.

Yours very truly,

OSBORNE & HESS,
Attorneys for John Armstrong Chanler.

To Thomas T. Sherman, Esq., 52 Wall Street, New York City.

126 PLAINTIFF'S EXHIBIT 2.

Printed in full in bill of exceptions at page 44.

PLAINTIFF'S EXHIBIT 3.

No. 6.

The People of the State of New York, by the Grace of God Free and Independent, to all to whom these presents shall come or may concern, Greeting:

Know ye, that we having examined the records and files in the office of the Clerk of the County of New York, and Clerk of the Supreme Court of said State for said County, do find a certain record, there remaining, in the words and figures following, to-wit:

[SEAL.]

127 At a Special Term of the Supreme Court, Part 2d, Held in and for the City and County of New York, at the County Court-house, on the 9th Day of May, 1899.

Present: Hon. Leonard A. Giegerich, Justice.

Supreme Court, County of New York.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

On reading the annexed verified petition, dated the 8th day of May, 1899, and the affidavits and notice of motion thereto annexed, and on motion of Jay & Candler, attorneys for the petitioners, Winthrop Chanler and Lewis S. Chanler,

Ordered, that notice of the application prayed for in said petition be given in the following manner: A copy of this order and of the said petition, affidavits and notice of motion shall be served upon the said John Armstrong Chanler, the alleged incompetent person, personally on or before the 19th day of May, 1899, by delivering the same to him in person, and that a copy of the same papers be served upon Margaret Chanler and Alida Emmet, sisters of the said alleged incompetent person, personally, by
128 delivering the same to them personally on or before the 10th day of May, 1899, and that three copies of the same papers be served upon William A. Chanler, Robert W. Chanler and Elizabeth W. Chapman, two brothers and a sister of the said alleged incompetent person, by mailing a copy addressed to each respectively, at No. 16 Exchange Place, in the City of New York, securely closed in a wrapper with the postage thereon prepaid.

Dated, 9th day of May, 1899.

Enter. L. A. G., *J. S. C.*

Supreme Court, New York County.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

To John Armstrong Chanler, Bloomingdale Insane Asylum, White Plains, Westchester County, New York; William A. Chanler, 16 Echange Place, New York City; Robert W. Chanler, 16 Exchange Place, New York City; Margaret Chanler, 317 West 74th Street, New York City; Elizabeth W. Chapman, 16 Exchange
129 Place, New York City; Alida Emmet, 317 West 74th Street, New York City:

Please take notice that upon the annexed petition and annexed affidavits, a motion will be made at a Special Term, Part I, of the Supreme Court, State of New York, held at the County Court House in the Borough of Manhattan, in the City and County of New York, on the 19th day of May, 1899, at ten and a

half o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order that the prayer of the said petition be granted and for such further and other order as shall be proper in the premises.

Dated the 9th day of May, 1899.

JAY & CANDLER,
Att'ys for Petitioners.

Office and Post Office Address, No. 48 Wall Street, New York.

Supreme Court, County of New York.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

To the Honorable the Supreme Court of the State of New York:

The petition of Winthrop Chanler and Lewis S. Chanler
130 of the Borough of Manhattan, City, County and State of New York, respectfully shows:

First. Your petitioners, Winthrop Chanler and Lewis S. Chanler are brothers of John Armstrong Chanler above named, that the said John Armstrong Chanler formerly resided at the Kensington Hotel Fifth Avenue and 15th Street, in the Borough of Manhattan, City of New York, and that on the 10th day of March 1897, the said John Armstrong Chanler was adjudged insane and committed to the Bloomingdale Insane Asylum at White Plains, New York, an institution for the custody and treatment of the insane, by Hon. Henry A. Gildersleeve, one of the Justices of this Honorable Court the said Justice then sitting at a Special Term of this Court, held in and for the City and County of New York; and that since the said 10th day of March, 1897, and some time previous thereto, the said John Armstrong Chanler was, and has ever since been, of unsound mind, and so far deprived of his reason and understanding as to be altogether unfit and unable to govern himself or manage his affairs, and has been at times frequently violent and dangerous to himself and those about him; and that he is, within the meaning of Title 6, Chapter 17, of the Code of Civil Procedure, an incompetent person.

Second. That the said John Armstrong Chanler is now unmarried having been divorced from his wife, and that the names and residences of his next of kin and heirs at law — so far as the same are known to your petitioners, or can with reasonable diligence be ascertained by them as follows: Your petitioner Winthrop Chanler who is a brother of said John Armstrong Chanler, your peti-
131 tioner Lewis S. Chanler, who is a brother of the said John Armstrong Chanler, Margaret Chanler, a sister who resides at No. 314 West 7th Street, New York City, William A. Chanler a brother, who is now traveling in Europe, and whose post office address is No. 16 Exchange Place, in the Borough of Manhattan City of New York; Robert W. Chanler, a brother, who is at present sojourning in Europe and whose post office address is No. 16 Ex

change Place, Borough of Manhattan, City of New York; Elizabeth W. Chapman, wife of John J. Chapman, a sister who is now sojourning in Europe, and whose post office address is No. 16 Exchange Place, in the City of New York; Alida Emmet, wife of Charles T. Emmet, a sister, who resides at No. 317 West 74th Street, in the Borough of Manhattan, City of New York.

Third. That the probable value of the property possessed and owned by the said John Armstrong Chanler, the alleged incompetent person, and also the property belonging to him which has been conveyed during his alleged incompetency, and to whom, and its value, and what consideration was paid for it, if any, or was agreed to be paid, are as follows:

The said John Armstrong Chanler is the owner of personal and real property, situated in the Borough of Manhattan, City of New York, State of New York, and elsewhere, of the probable value of one hundred and fifty thousand dollars ($150,000); and in addition to that he is entitled to receive from the Trustees under the will of his father, Winthrop Chanler, an annual income of about $5,000, during the term of his natural life; that the property
132 conveyed by the said John Armstrong Chanler during his alleged incompetency is as follows: The real estate situated in the block bounded by 10th and 11th Avenues and 14th and 15th Street, with the bulkhead and dock rights on the westerly side of 11th Avenue, between 14th and 15th Streets, in the Borough of Manhattan, City of New York, in which said real estate the said John Armstrong Chanler had an undivided one-eighth interest, was conveyed by him for the consideration of $100,000 to his brothers and sisters hereinabove mentioned, except that in the case of the said Robert W. Chanler, a brother of the said John Armstrong Chanler, his, the said Robert's interest was conveyed to the United States Trust Company as Trustee for him, and that at the time of such conveyance a mortgage with accrued interest thereon amounting to $52,124, which was a lien on the share of the said John Armstrong Chanler, was paid and the balancee of the purchase price, namely, the sum of $47,876, was received by the said John Armstrong Chanler in cash, no previous application having been made for this relief.

Wherefore your petitioners pray that Stanford White, or some other suitable and proper person, may be, by the order and the judgment of this Court, appointed a Committee of the person and of the property and estate of the said John Armstrong Chanler, as an incompetent person, and that your petitioners may
133 have such further and other order and relief as may be just and proper in the premises.

Dated, New York, the 8th day of May, 1899.

WINTHROP CHANLER,
By LEWIS S. CHANLER,
LEWIS S. CHANLER,
Petitioners.

JAY & CANDLER,
Attorneys for Petitioners,
No. 48 Wall Street, New York.

STATE OF NEW YORK,
County of New York, ss:

Lewis S. Chanler, being duly sworn, deposes and says that he is one of the petitioners above named; that he has read the foregoing petition and knows the contents thereof, and that the matters of fact therein stated are true.

LEWIS S. CHANLER.

Sworn to before me this 8th day of May, 1899.

JOHN H. BOGARDUS,
Notary Public, Kings County.

Certificate filed in New York County.

VILLAGE OF WHITE PLAINS,
County of Westchester, State of New York, ss:

Samuel B. Lyon, being duly sworn, deposes and says that he is a physician, and is the Medical Superintendent of Bloomingdale Asylum, White Plains, a hospital for the care and treatment 134 of the insane, and has been such Superintendent for the past eight years.

That he knows and is personally acquainted with John Armstrong Chanler, who is a patient in the above named hospital. That he believes the said John Armstrong Chanler to be insane and unable to manage himself or his affairs, and the grounds of his belief are as follows:

That since the patient's admission to Bloomingdale, he has had delusions that conspiracies existed against his life and happiness; he has passed his nights in watching; has often declared his belief in his own pre-eminent talents as a lawyer, pugilist, poet, etc.; that while really a very bright man naturally, he is under the delusion that his mental powers are almost supernatural, and that his personality has undergone a change, and that he now has a very high mission to fulfill toward the world. His disease appears to pursue the typical course of what is known as systematized delusional insanity, beginning with suspicions of persecution by enemies for a purpose, and later developing expansive ideas of his own personality.

SAMUEL B. LYON.

Sworn to before me this 27th day of April, 1899.

LOUIS D. FERRISS,
Notary Public, Westchester Co., N. Y.

Supreme Court, County of New York.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

STATE OF NEW YORK,
County of New York, ss:

M. Allen Starr, being duly sworn, says that he resides at No. 5 West 54th Street, in the Borough of Manhattan, City of New York, and is a graduate of an incorporated medical college and a qualified medical examiner in lunacy, and has a certificate of his qualification as such examiner, and that such certificate, or a certified copy thereof, is on file in the office of the State Commission of Lunacy.

Deponent further says that on the 10th day of March, 1897, he together with Eugene Fuller, M. D., personally examined with care and diligence the said John Armstrong Chanler, who then was residing at the Kensington Hotel, in the City of New York, and as a result of such examination — was found that the said John Armstrong Chanler was insane and a proper subject for custody and treatment in some institution for the insane as an insane person, under the provisions of the Statute of the State of New York.

136 Deponent further says that his opinion, formed upon such examination as to the insanity of the said John Armstrong Chanler, was based upon the following facts: The said John Armstrong Chanler stated to me that the color of his eyes, shape of his nose and ears, had been changed so that he resembled Napoleon; that this was done by the spirit which acted upon and through him; that he was inspired to lead a holy war in Europe; that his coming had been foretold in the Book of Revelation; that the said John Armstrong Chanler talked volubly about his inspiration, frequently went into a trance-like state, in which he talked French, and on returning to English declared that it was not he, but the spirit, which had been speaking; showed the scar of a burn on his hand made by carrying live coal at the command of the spirit; pointed out certain lines in a picture of the Sphinx which he claimed were his initials, put there in prophecy of his coming; said he saw his name carved in the mantel; said the spirit commanded him by its voice which he heard, and said he was immortal, and that nothing could harm him, thus excusing himself for exposure to cold, neglecting ordinary clothing, and going in his bare feet.

Deponent further says that he learned from the valet of the said John Armstrong Chanler, who stated that he had been with him for over fourteen years, that the delusion of said Chanler being inspired had led him to do many insane acts, that it had led him to become suspicious of his friends, and that consequently

137 said Chanler had secluded himself, and been neglecting his food, and had become thin and anæmic.

M. ALLEN STARR, M. D.,
Prof. of Nervous Diseases,
College Phys. & Surg., New York.

Sworn to before me this 5th day of May, 1899.

WILLIAM WHITE WHITTAKER,
Notary Public, Kings County.

Certificate filed in New York County.

Supreme Court, New York County.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

STATE OF NEW YORK,
County of New York, ss:

Austin Flint, being duly sworn, deposes and says, that he resides at No. 60 East 34th Street, in the Borough of Manhattan, and the City of New York, and is a practicing physician, and has practiced his profession in the said City for upwards of twenty years past, and has made a specialty of mental diseases, and has been a duly qualified examiner in lunacy for a number of years.

138 Deponent further says that, together with Dr. Carlos F. MacDonald, he made a personal examination of John Armstrong Chanler, a patient in the Bloomingdale Asylum, for the purpose of determining his mental condition; that the first examination was made on the 16th day of March, 1898, when deponent, together with the said Dr. Carlos F. MacDonald, spent two hours in conversation with said Chanler in his apartments at Bloomingdale; that at the time of said visit the deponent carefully examined the said John Armstrong Chanler, who immediately began to explain his case to deponent and the said Dr. MacDonald, and said, among other things, that he was the victim of a gigantic conspiracy on the part of his relatives, who were jealous of his great mental and physical superiority to them; the other conspirators being prominent citizens of the City of New York, who were named by the said John Armstrong Chanler, including prominent lawyers and Judges of the said City; that he also said that they had subsidized the State and National Governments, which were arrayed against him; that his case was thoroughly prepared, and it would be taken up by the Courts just as soon as the Spanish-American war scare was over; that he would expose a very prominent person, whom he named, as bogus prestige, and in this he would be "backed up by six million, five hundred thousand Silverites." He called our attention to large files of the New York World and other papers, which were piled up on the floor in one corner of his bedroom, which he said contained his case, and which he had edited from day to day as published, "blue penciling," all the lines, and that he would show them all up in due time. He also said

139 that he was an expert in the art of boxing, in pool-playing and in pistol shooting; that he could hit with the pistol two out of three apples thrown into the air, every time; also that he was an expert in mental strain and in mental impressions, depressions and exaltation, and that he excelled in mental and physical power;

that he was a mental gladiator, a John L. Sullivan in debate; that in controversy or debate he not only had never failed to hold his own, but had invariably knocked out his opponent. This great mental and physical power, he said, was due to his peculiar diet of bread and potatoes, with some other vegetable and fruit; and made other foolish and absurd statements. That the said Chanler, during the said interview talked very rapidly, was exceedingly voluble, demonstrative, effusive and vociferous, and at times vulgar and profane. At the end of the conversation, which he terminated very abruptly, he appeared to be greatly exhausted as a result of the great mental excitement and strain he had been under for the period of two hours. He dismissed deponent and said Dr. MacDonald after exacting from deponent a promise to return in the near future and finish the conversation.

Deponent further says that in pursuance to the said promise, and in order to make a further examination, deponent, together with the said Carlos F. MacDonald, again visited the said John Armstrong Chanler in his apartment at Bloomingdale on April 9th, 1898; that at the said time, the said Chanler was not completely dressed, and acted in a strange manner; that, among other things, he took from under the mattress of his bed a large volume of manu-
140 script, to which he called our attention, stating that it was his case, and that no one but himself knew its contents and that he intended to read it on the witness stand when his case came up in Court. He was as excited, effusive, and vociferous in his manner as on the first visit. At times he shouted at the top of his voice, saying, amongst other things, that his system had gradually undergone a change until he had become a magnet and his stomach a Leyden jar. As proof of this magnetic power, he showed us a much tarnished silver box, which he said he had carried in his pocket for more than two years without its having undergone the slightest change in color, until recently, that is, since he had become a magnet, when it suddenly became oxidized, "as you now see it." This change in color he said could not occur if the box were carried by any one else.

Dependent further says that at said time, he made a physical examination of the said John Armstrong Chanler, which showed that his pulse was 110, his hands cold and tremulous, pupils normal, tongue coated and tremulous, and there was also a marked tremor of the labial muscles and of the eyelids when the eyes were closed. The reflexes were much diminished; there was no sign of ataxia or want of co-ordinating power; he stated that he slept well, that his bowels were regular, and that he was in perfect mental and physical health.

Deponent further says, from the examination so made, and from reading the history of the case in the hospital case book, he was at that time clearly of the opinion that the said John Armstrong
141 Chanler was insane, and a proper subject for attention and treatment as such in an institution for the insane; that the form of insanity from which he was suffering was that known as paranoia, or chronic delusional insanity, which is well understood

and which is characterized by morbidly extravagant ideas of self-importance and grandeur, together with delusions of conspiracy and persecution, and eventually transformation of the personality of the individual.

Deponent further says that subsequently, and on the 20th day of April, 1899, deponent, together with the said Dr. Carlos F. MacDonald, made a further examination of the said John Armstrong Chanler, which lasted from about 6:30 to eight o'clock in the evening of that day; and on that occasion found the said John Armstrong Chanler in his bed and in what seemed to be his usual condition. At first he did not complain of any physical ailment, but in reply to questions he said that on April 14th, 1899, he was suddenly seized with a remarkable sensation in the spine, just above the sacrum, that there was no pain, but the sensation was like the revolution of a buzz saw. He got up and moved freely about the room, and after I had carefully examined his spine I found nothing the matter with it. He was wearing a porous plaster, which he said had given him instant relief. He said his nervous system was breaking down under his incarceration, and that the trouble with the spine started in his head. He said nothing about his spinal trouble except in answer to questions. In the opinion of deponent the said John Armstrong Chanler had no disease of the spine, and the difficulty complained of was a delusion, probably temporary.

Deponent further says that the said John Armstrong
142 Chanler received him most cordially, was as voluble, excited and vehement in his language as in the examination hereinbefore referred to in April, 1898, talked most freely, and seemed to conceal nothing from deponent.

Deponent further says that the abnormal mental condition of the said John Armstrong Chanler is markedly intensified since the first examination, made in the year 1898; that the said John Armstrong Chanler now firmly believes that he is a reincarnation of Napoleon Bonaparte, and that he recited to deponent and the said Dr. Carlos F. MacDonald seven or eight sonnets of his own composition, saying that he had suddenly become the greatest poet of the world's history, excepting only Shakespeare. He went into a trance, at the request of Dr. MacDonald, and gave the most vivid illustrations of the death of Napoleon. He had told deponent and the said MacDonald that he was Napoleon only when in a trance.

Deponent further says that the foregoing are a few instances of a most violent and tragic talk with the said John Armstrong Chanler, which lasted, as aforesaid, over an hour, and that the said talk was accompanied with denunciations of vile conspiracies against him.

Deponent further says that his opinions expressed at the time of the second interview hereinbefore referred to in April, 1898, have been confirmed, and that the said Chanler is now, in his opinion, a hopeless paranoiac, his mental disorder being incurable and progressive.

Sworn to before me this — day of —— 1899.

—— ——.

143 STATE OF NEW YORK
County of New York, ss:

William White Whittaker, being duly sworn, deposes and says that he is a clerk in the office of Jay & Candler the attorneys for the petitioners in the above entitled proceeding. That the foregoing affidavit which was intended to have been verified by Dr. Austin Flint was prepared from statements furnished to the attorneys for the petitioners signed by said Dr. Flint and by Dr. Carlos F. MacDonald and is similar to the affidavit verified by the said Dr. Carlos F. MacDonald, which was prepared from similar statements, and that such affidavit was approved of by Dr. Flint but unfortunately the said Dr. Flint is at present very seriously ill with pneumonia and it is impossible to have him swear to his affidavit at the present time.

WILLIAM WHITE WHITTAKER.

Sworn to before me this 8th day of May, 1899.
JOHN H. BOGARDUS,
Notary Public, Kings County.

Certificate filed in New York County.

144 Supreme Court, New York County.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

STATE OF NEW YORK,
County of New York, ss:

Carlos F. MacDonald, being duly sworn, says: That he resides at 85 Madison Avenue, Borough of Manhattan, City of New York, and has been a practicing physician for upwards of twenty-five years, and has given special attention to the treatment and condition of the insane; that for many years he was Superintendent of Asylums for Insane in the State of New York, and has had occasion to observe and treat many hundreds of persons who were afflicted with insanity; that he was President of the New York State Commission in Lunacy for more than seven years and has been professor of mental diseases in the Bellevue Hospital Medical College for upwards of fifteen years.

Deponent further says that, together with Dr. Austin Flint, he made a personal examination of John Armstrong Chanler, a patient in the Bloomingdale Asylum, for the purpose of determining his mental condition; that the first examination was made on the 16th day of March, 1898, when deponent, together with the said Dr.
145 Austin Flint, spent two hours in conversation with said Chanler in his apartments at Bloomingdale; that at the time of said visit deponent carefully examined the said John Armstrong Chanler, who immediately began to explain his case to deponent and the said Dr. Flint, and said, among other things,

that he was the victim of a gigantic conspiracy on the part of his relatives, who were jealous of his great mental and physical superiority to them; the other conspirators being prominent citizens of the City of New York, who were named by the said John Armstrong Chanler, including prominent lawyers and Judges of the said City; that he also said that they had subsidized the State and National Governments, which were arrayed against him; that his case was thoroughly prepared, and it would be taken up by the Courts just as soon as the Spanish-American War scare was over; that he would expose a very prominent person, whom he named, as bogus prestige, and in this he would be "backed up by six million, five hundred thousand Silverites." He called our attention to large files of the New York World and other papers, which were piled up on the floor in one corner of his bedroom, which he said contained his case, and which he had edited from day today as published, "blue penciling" all the lines, and that he would show them all up in due time. He also said that he was an expert in the art of boxing, in pool playing and in pistol shooting; that he could hit with the pistol two out of three apples thrown into the air every time; also that he was an expert in mental strain and in mental impressions, depressions and exaltation, and that he excelled in mental and physical power; that he was a mental gladiator, a John L. Sullivan in debate; that in controversy or debate he not only had
146 never failed to hold his own, but had invariably knocked out his opponent. This great mental and physical power, he said, was due to his peculiar diet of bread and potatoes, with some other vegetables and fruit; and made other foolish and absurd statements. That the said Chanler, during the said interview, talked very rapidly, was exceedingly voluble, demonstrative, effusive and vociferous, and at times vulgar and profane. At the end of the conversation, which he terminated very abruptly, he appeared to be greatly exhausted as a result of the great mental excitement and strain he had been under for the period of two hours. He dismissed deponent and said Dr. Flint, after exacting from us a promise to return in the near future and finish the conversation.

Deponent further says that in pursuance to the said promise, and in order to make a further examination, deponent, together with the said Austin Flint, again visited the said John Armstrong Chanler in his apartment at Bloomingdale on April 9th, 1898; that at the said time the said Chanler was not completely dressed, and acted in a strange manner; that, among other things, he took from under the mattress of his bed a large volume of manuscript, to which he called our attention, stating that it was his case, and that no one but himself knew its contents, and that he intended to read it on the witness stand when his case came up in court. He was as excited, effusive, and vociferous in his manner as on the first visit. At times he shouted at the top of his voice, saying among other things, that his system had gradually undergone a change until he had become a magnet and his stomach a Leyden jar. As
147 proof of this magnetic power, he showed us a much tarnished silver box, which he said he had carried in his pocket for

more than two years without its having undergone the slightest change in color, until recently, that is, since he had become a magnet, when it suddenly became oxidized, "as you now see it." This change in color he said could not occur if the box were carried by any one else.

Deponent further says that at said time, he made a physical examination of the said John Armstrong Chanler, which showed that his pulse was 110, his hands cold and tremulous, pupils normal, tongue coated and tremulous, and there was also a marked tremor of the labial muscles and of the eyelids when the eyes were closed. The reflexes were much diminished; there was no sign of ataxia or want of co-ordinating power; he stated that he slept well, that his bowels were regular, and that he was in perfect mental and physical health.

Deponent further says, from the examination so made, and from reading the history of the case in the hospital case book, he was at that time clearly of the opinion that the said John Armstrong Chanler was insane, and a proper subject for attention and treatment as such in an institution for the insane; that the form of insanity, from which he was suffering, was that known as paranoia, or chronic delusional insanity, which is well understood and which is characterized by morbidly extravagant ideas of self-importance and grandeur, together with delusions of conspiracy and persecution, and eventually transformation of the personality of the individual.

148 Deponent further says that subsequently, and on the 20th day of April, 1899, deponent, together with the said Dr. Austin Flint, made a further examination of the said John Armstrong Chanler, which lasted from about 6:30 to eight o'clock in the evening of that day; and on that occasion found the said John Armstrong Chanler in his bed and in what seemed to be his usual condition. At first he did not complain of any physical ailment, but in reply to questions he said that on April 14th, 1899, he was suddenly seized with a remarkable sensation in the spine, just above the sacrum, that there was no pain, but the sensation was like the revolution of a buzz saw. He got up and moved freely about the room. Careful examination of his spine showed that there was nothing the matter with it. He was wearing a porous plaster, which he said had given him instant relief. He said his nervous system was breaking down under his reincarceration, and that the trouble with the spine started in his head. He said nothing about his spinal trouble except in answer to questions. In the opinion of deponent and of the said Dr. Austin Flint the said John Armstrong Chanler had no disease of the spine, and the difficulty complained of was a delusion, probably temporary.

Deponent further says that the said John Armstrong Chanler received him most cordially, was as voluble, excited and vehement in his language as in the examination hereinbefore referred to in April, 1898, talked most freely, and seemed to conceal nothing from deponent.

Deponent further says that the abnormal mental condition of the

said John Armstrong Chanler is markedly intensified since
149 the first examination made in the year 1898; that the said John Armstrong Chanler now firmly believes that he is a reincarnation of Napoleon Bonaparte, and that he recited to deponent and the said Dr. Austin Flint seven or eight sonnets of his own composition, saying that he had suddenly become the greatest poet of the world's history, excepting only Shakespeare. He went into a trance at the request of deponent, and gave the most vivid illustrations of the death of Napoleon. He had told deponent that he was Napoleon only when in the trance.

Deponent further says that the foregoing are a few instances of a most violent and tragic talk with the said John Armstrong Chanler, which lasted as aforesaid, over an hour; and that the said talk was accompanied with denunciations of vile conspiracies against him.

Deponent further says that his opinions expressed at the time of the second interview hereinbefore referred to in April, 1898, have been confirmed, and that the said Chanler is now, in his opinion, a hopeless paranoic, his mental disorder being incurable and progressive.

CARLOS F. MACDONALD.

Sworn to before me this 5th day of May, 1899.

WILLIAM WHITE WHITTAKER,
Notary Public, Kings County.

Certificate filed in New York County.

150 Cover endorsed: Supreme Court, New York County. In the Matter of John Armstrong Chanler, an alleged incompetent person. Order, Notice of motion, petition and affidavits. Jay & Candler, Attorneys for Petitioners, No. 48 Wall Street, New York. Filed and Recorded May 9, 1899.

151 At a Special Term of the Supreme Court, Part 2nd, Held in and for the City and County of New York, at the County Courthouse, on the 9th day of May, 1889.

Present: Hon. Leonard A. Giegerich, Justice.

Supreme Court, County of New York.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

On reading the annexed verified petition, dated the 8th day of May, 1899, and the affidavits and notice of motion thereto annexed, and on motion of Jay and Candler, attorneys for the petitioners, Winthrop Chanler and Lewis S. Chanler,

Ordered that notice of the application prayed for in the said petition be given in the following manner: A copy of this order and of the said petition, affidavits and notice of motion shall be served

upon the said John Armstrong Chanler, the alleged incompetent person, personally on or before the 19th day of May, 1899, by delivering the same to him in person, and that a copy of the same papers be served upon Margaret Chanler and Alida Emmet, sisters of the said alleged incompetent person, personally, by delivering the same to them personally on or before the 10th day of
152 May, 1899, and that three copies of the same papers be served upon William A. Chanler, Robert W. Chanler and Elizabeth W. Chapman, two brothers and a sister of the said alleged incompetent person, by mailing a copy addressed to each respectively, at No. 16 Exchange Place, in the City of New York, securely closed in a wrapper with the postage thereon prepaid.

Dated 9th day of May, 1899.

Enter,

L. A. G., *J. S. C.*

Supreme Court, New York County.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

To John Armstrong Chanler, Bloomingdale Insane Asylum, White Plains, Westchester County, New York; William A. Chanler, 16 Exchange Place, New York City; Robert W. Chanler, 16 Exchange Place, New York City; Margaret Chanler, 317 West 74th Street, New York City; Elizabeth W. Chapman, 16 Ex-
153 change Place, New York City; Alida Emmet, 317 West 74th Street, New York City:

Please take notice that upon the annexed petition and annexed affidavits, a motion will be made at a Special Term, Part I, of the Supreme Court, State of New York, held at the County Court House in the Borough of Manhattan, in the City and County of New York, on the 19th day of May, 1899, at ten and a half o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order that the prayer of the said petition be granted and for such further and other order as shall be proper in the premises.

Dated the 9th day of May, 1899.

JAY & CANDLER,
Attorneys for Petitioners.

Office and Post Office Address, No. 48 Wall Street, New York.

Supreme Court, County of New York.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

To the Honorable the Supreme Court of the State of New York:

The petition of Winthrop Chanler and Lewis S. Chanler, of the Borough of Manhattan, City, County and State of New
154 York, respectfully shows:

First. Your petitioners, Winthrop Chanler and Lewis S. Chanler, are brothers of John Armstrong Chanler above named, that the said John Armstrong Chanler formerly resided at the Kensington Hotel, Fifth Avenue and 15th Street, in the Borough of Manhattan, City of New York, and that on the 10th day of March, 1897, the said John Armstrong Chanler was adjudged insane and committed to the Bloomingdale Insane Asylum at White Plains, New York, an institution for the custody and treatment of the insane, by Hon. Henry A. Gildersleeve, one of the Justices of this Honorable Court, the said Justice then sitting at a Special Term of this Court, held in and for the City and County of New York; and that since the said 10th day of March, 1897, and some time previous thereto, the said John Armstrong Chanler was, and has ever since been, of unsound mind, and so far deprived of his reason and understanding as to be altogether unfit and unable to govern himself or manage his affairs, and has been at times frequently violent and dangerous to himself and those about him; and that he is, within the meaning of Title 6, Chapter 17, of the Code of Civil Procedure, an incompetent person.

Second. That the said John Armstrong Chanler is now unmarried, having been divorced from his wife, and that the names and residences of his next of kin and heirs at law, so far as the same are known to your petitioners, or can with reasonable diligence be ascertained by them, are as follows: Your petitioner Winthrop Chanler, who is a brother of said John Armstrong Chanler,
155 your petitioner Lewis S. Chanler, who is a brother of the said John Armstrong Chanler, Margaret Chanler, a sister who resides at No. 314 West 74th Street, New York City, William A. Chanler, a brother, who is now travelling in Europe, and whose post office address is No. 16 Exchange Place, in the Borough of Manhattan, City of New York; Robert W. Chanler, a brother, who is at present sojourning in Europe and whose post office address is No. 16 Exchange Place, Borough of Manhattan, City of New York; Elizabeth W. Chapman, wife of John J. Chapman, a sister who is now sojourning in Europe, and whose post office address is No. 16 Exchange Place, in the City of New York; Alida Emmet, wife of Charles T. Emmet, a sister, who resides at No. 317 West 74th Street, in the Borough of Manhattan, City of New York.

Third. That the probable value of the property possessed and owned by the said John Armstrong Chanler, the alleged incom-

petent person, and also the property belonging to him which has been conveyed during his alleged incompetency, and to whom, and its value, and what consideration was paid for it, if any, or was agreed to be paid, are as follows:

The said John Armstrong Chanler is the owner of personal and real property, situated in the Borough of Manhattan, City of New York, State of New York, and elsewhere, of the probable value of one hundred and fifty thousand dollars ($150,000); and in addition to that he is entitled to receive from the Trustees under the will of his father, Winthrop Chanler, an annual income of
156 about $5,000, during the term of his natural life; that the property conveyed by the said John Armstrong Chanler during his alleged incompetency is as follows: The real estate situated in the block bounded by 10th and 11th Avenues and 14th and 15th Streets, with the bulkhead and dock rights on the westerly side of 11th Avenue, between 14th and 15th Streets, in the Borough of Manhattan, City of New York, in which said real estate the said John Armstrong Chanler had an undivided one-eighth interest, was conveyed by him for the consideration of $100,000 to his brothers and sisters hereinabove mentioned, except that in the case of the said Robert W. Chanler, a brother of the said John Armstrong Chanler, his, the said Robert's interest was conveyed to the United States Trust Company as Trustee for him, and that at the time of such conveyance, a mortgage with accrued interest thereon amounting to $52,124, which was a lien on the share of the said John Armstrong Chanler, was paid and the balance of the purchase price, namely, the sum of $47,876, was received by the said John Armstrong Chanler in cash, no previous application having been made for this relief.

Wherefore, your petitioners pray that Stanford White, or some other suitable and proper person, may be, by the order and the judgment of this Court, appointed a Committee of the person and of the property and estate of the said John Armstrong Chanler, as an incompetent person, and that your petitioners may have
157 such further and other order and relief as may be just and proper in the premises.

Dated, New York, the 8th day of May, 1899.

WINTHROP CHANLER,
By LEWIS S. CHANLER,
LEWIS S. CHANLER,
Petitioners.

JAY & CANDLER,
Attorneys for Petitioners, No. 48 Wall Street, New York.

STATE OF NEW YORK,
County of New York, ss:

Lewis S. Chanler, being duly sworn, deposes and says: That he is one of the petitioners above named; that he has read the foregoing petition and knows the contents thereof, and that the matters of fact therein stated are true.

LEWIS S. CHANLER.

Sworn to before me this 8th day of May, 1899.
JOHN H. BOGARDUS,
Notary Public, Kings County.

Certificate filed in New York County.

VILLAGE OF WHITE PLAINS,
County of Westchester,
State of New York, ss:

Samuel B. Lyon, being duly sworn, deposes and says: That he is a physician, and is the Medical Superintendent of Bloomingdale Asylum, White Plains, a hospital for the care and treatment
158 of the insane, and has been such Superintendent for the past eight years.

That he knows and is personally acquainted with John Armstrong Chanler, who is a patient in the above named hospital. That he believes the said John Armstrong Chanler [illegible]e insane and unable to manage himself or his affairs, and the g[illegible]nds of his belief are as follows:

That since the patient's admission to Bloomingdale, he has had delusions that conspiracies existed against his life and happiness; he has passed his nights in watching; has often declared his belief in his own pre-eminent talents as a lawyer, pugilist, poet, etc.; that while really a very bright man naturally, he is under the delusion that his mental powers are almost supernatural, and that his personality has undergone a change, and that he now has a very high mission to fulfill toward the world. His disease appears to pursue the typical course of what is known as systemized delusional insanity, beginning with suspicions of persecution by enemies for a purpose, and later developing expansive ideas of his own personality.

SAMUEL B. LYON.

Sworn to before me this 27th day of April, 1899.
LOUIS D. FERRISS,
Notary Public, Westchester Co., N. Y.

159 Supreme Court, County of New York.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

STATE OF NEW YORK,
County of New York, ss:

M. Allen Starr, being duly sworn, says: That he resides at No. 5 West 54th Street, in the Borough of Manhattan, City of New York, and is a graduate of an incorporated medical college and a qualified medical examiner in lunacy, and has a certificate of his qualification as such examiner, and that such certificate, or a certified copy thereof, is on file in the office of the State Commission of Lunacy.

Deponent further says that on the 10th day of March, 1897, he together with Eugene Fuller, M. D., personally examined with care and diligence the said John Armstrong Chanler, who then was residing at the Kensington Hotel, in the City of New York, and as a result of such examination was found that the said John Armstrong Chanler was insane and a proper subject for custody and treatment in some institution for the insane as an insane person, under the provisions of the statute of the State of New York.

Deponent further says that his opinion, formed upon such examination as to the insanity of the said John Armstrong
160 Chanler, was based upon the following facts: The said John Armstrong Chanler stated to me that the color of his eyes, shape of his nose and ears, had been changed so that he resembled Napoleon; that this was done by the spirit which acted upon and through him; that he was inspired to lead a holy war in Europe; that his coming had been foretold in the Book of Revelation; that the said John Armstrong Chanler talked volubly about his inspiration, frequently went into a trans-like state, in which he talked French, and on returning to English declared that it was not he, but the spirit, which had been speaking; showed the scar of a burn on his hand made by carrying a live coal at the command of the spirit; pointed out certain lines in a picture of the Sphinx which he claimed were his initials, put there in prophecy of his coming; said he saw his name carved in the mantel; said the spirit commanded him by its voice which he heard, and said he was immortal, and that nothing could harm him, thus excusing himself for exposure to cold, neglecting ordinary clothing and going in bare feet.

Deponent further says, that he learned from the valet of the said John Armstrong Chanler, who stated that he had been with him for over fourteen years, that the delusion of said Chanler being inspired had led him to do many insane acts, that it had led him to become suspicious of his friends, and that consequently said
161 Chanler had secluded himself, and been neglecting his food, and had become thin and anæmic.

M. ALLEN STARR, M. D.,
Professor of Nervous Diseases,
College Physicians & Surgeons, New York.

Sworn to before me this 6th day of May, 1899.

WILLIAM WHITE WHITTAKER,
Notary Public, Kings County.

Certificate filed in New York County.

Supreme Court, New York County.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

STATE OF NEW YORK,
County of New York, ss:

Austin Flint, being duly sworn, deposes and says: That he resides at No. 60 East 34th Street, in the Borough of Manhattan, and the City of New York, and is a practicing physician, and has practiced his profession in the said City for upwards of twenty years past, and has made a specialty of mental diseases, and has been
162 duly qualified examiner in lunacy for a number of years.

Deponent further says that, together with Dr. Carlos F. MacDonald, he made a personal examination of John Armstrong Chanler, a patient in the Bloomingdale Asylum, for the purpose of determining his mental condition; that the first examination was made on the 16th day of March, 1898, when deponent, together with the said Dr. Carlos F. MacDonald, spent two hours in conversation with said Chanler in his apartments at Bloomingdale; that at the time of said visit the dependent carefully examined the said John Armstrong Chanler, who immediately began to explain his case to deponent and the said Dr. MacDonald, and said, among other things, that he was the victim of a gigantic conspiracy on the part of his relatives, who were jealous of his great mental and physical superiority to them; the other conspirators being prominent citizens of the City of New York, who were named by the said John Armstrong Chanler, including prominent lawyers and Judges of the said City; that he also said that they had subsidized the State and National Governments, which were arrayed against him; that his case was thoroughly prepared, and it would be taken up by the Courts just as soon as the Spanish-American War scare was over; that he would expose a very prominent person, whom he named, as bogus prestige, and in this he would be "backed by six million, five hundred thousand Silverites." He called our attention to large files of the New York World and other papers, which were piled up on the floor in one corner of his bedroom, which he said contained his case, and which he had edited from day to day as published, "blue penciling" all the lines, and that he would
163 show them all up in due time. He also said that he was an expert in the art of boxing, in pool playing and in pistol shooting; that he could hit with the pistol two out of three apples thrown into the air every time; also that he was an expert in mental strain and in mental impressions, depressions and exaltation, and that he excelled in mental and physical power; that he was a mental gladiator, a John L. Sullivan in debate; that in controversy or debate he not only had never failed to hold his own, but had invariably knocked out his opponent. This great mental and physical power, he said, was due to his peculiar diet of bread and potatoes,

with some other vegetable and fruit; and made other foolish and absurd statements. That the said Chanler, during the said interview talked very rapidly, was exceedingly voluble, demonstrative, effusive and vociferous, and at times vulgar and profane. At the end of the conversation, which he terminated very abruptly, he appeared to be greatly exhausted as a result of the great mental excitement and strain he had been under for the period of two hours. He dismissed deponent and said Dr. MacDonald after exacting from deponent a promise to return in the near future and finish the conversation.

Deponent further says that in pursuance to the said promise, and in order to make a further examination, deponent, together with the said Carlos F. MacDonald, again visited the said John Armstrong Chanler in his apartment at Bloomingdale on April 9th, 1898; that at the said time, the said Chanler was not completely dressed, and acted in a strange manner; that, among other
164 things, he took from under the mattress of his bed a large volume of manuscript, to which he called our attention, stating that it was his case, and that no one but himself knew its contents, and that he intended to read it on the wi-ness stand when his case came up in court. He was as excited, effusive, and vociferous in his manner as on the first visit. At times he shouted at the top of his voice, saying, amongst other things, that his system had gradually undergone a change until he had become a magnet and his stomach a Leyden jar. As proof of this magnetic power, he showed us a much tarnished silver box, which he said he had carried in his pocket for more than two years without its having undergone the slightest change in color, until recently, that is, since he had become a magnet, when it suddenly became oxidized, "as you now see it." This change in color he said could not occur if the box were carried by any one else.

Deponent further says that at said time, he made a physical examination of the said John Armstrong Chanler, which showed that his pulse was 110, his hands cold and tremulous, pupils normal, tongue coated and tremulous, and there was also a marked tremor of the labial muscles and of the eyelids when the eyes were closed. The reflexes were much diminished; there was no sign of ataxia or want of co-ordinating power; he stated that he slept well, that his bowels were regular, and that he was in perfect mental and physical health.

Deponent further says, from the examination so made, and from reading the history of the case in the hospital case book, he was at that time clearly of the opinion that the said John Armstrong Chanler was insane, and a proper subject for attention and
165 treatment as such in an institution for the insane; that the form of insanity from which he was suffering was that known as paranoia, or chronic delusional insanity, which is well understood and which is characterized by morbidly extravagant ideas of self importance and grandeur, together with delusions of conspiracy and persecution, and eventually transformation of the personality of the individual.

Deponent further says that subsequently, and on the 20th day of April, 1899, deponent, together with the said Dr. Carlos F. MacDonald, made a further examination of the said John Armstrong Chanler, which lasted from about 6:30 to eight o'clock in the evening of that day; and on that occasion found the said John Armstrong Chanler in his bed and in what seemer to be his usual condition. At first he did not complain of any physical ailment, but in reply to questions he said that on April 14th, 1899, he was suddenly seized with a remarkable sensation in the spine, just above the sacrum, that there was no pain, but the sensation was like the revolution of a buzz saw. He got up and moved freely about the room, and after I had carefully examined his spine I found nothing the matter with it. He was wearing a porous plaster, which he said had given him instant relief. He said his nervous system was breaking down under his incarceration, and that the trouble with the spine started in his head. He said nothing about his spinal trouble except in answer to questions. In the opinion of deponent the said John Armstrong Chanler had no disease of the spine, and the difficulty complained of was a delusion, probably temporary.

166 Deponent further says that the said John Armstrong Chanler received him most cordially, was as voluble, excited and vehement in his language as in the examination hereinbefore referred to in April, 1898, talked most freely, and seemed to conceal nothing from deponent.

Deponent further says that the abnormal mental condition of the said John Armstrong Chanler is markedly intensified since the first examination, made in the year 1898; that the said John Armstrong Chanler now firmly believes that he is a reincarnation of Napoleon Bonaparte, and that he recited to deponent and the said Dr. Carlos F. MacDonald seven or eight sonnets of his own composition, saying that he had suddenly become the greatest poet of the world's history, excepting only Shakespeare. He went into a trance, at the request of Dr. MacDonald, and gave the most vivid illustrations of the death of Napoleon. He had told deponent and the said MacDonald that he was Napoleon only when in a trance.

Deponent further says that the foregoing are a few instances of a most violent and tragic talk with the said John Armstrong Chanler, which lasted, as aforesaid, over an hour, and that the said talk was accompanied with denunciations of vile conspiracies against him.

Deponent further says that his opinions expressed at the time of the second interview hereinbefore referred to in April, 1898, have been confirmed, and that the said Chanler is now, in his opinion, a hopeless paranoiac, his mental disorder being incurable and progressive.

Sworn to before me this — day of ——, 1899.

—— ——.

167 State of New York,
County of New York, ss:

William White Whittaker, being duly sworn, deposes and says that he is a clerk in the office of Jay & Candler, the attorneys for the petitioners in the above entitled proceeding. That the foregoing

affidavit which was intended to have been vertified by Dr. Austin Flint was prepared from statements furnished to the attorneys for the petitioners signed by said Dr. Flint, and by Dr. Carlos F. MacDonald and is similar to the affidavit verified by the said Dr. Carlos F. MacDonald, which was prepared from similar statements, and that such affidavit was approved of by Dr. Flint but unfortunately the said Dr. Flint is at present very seriously ill with pneumonia and it is impossible to have him swear to his affidavit at the present time.

WILLIAM WHITE WHITTAKER.

Sworn to before me this 8th day of May, 1899.

JOHN H. BOGARDUS,
Notary Public, Kings County.

Certificate filed in New York County.

168 Supreme Court, New York County.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

STATE OF NEW YORK,
County of New York, ss:

Carlos F. MacDonald, being duly sworn, says that he resides at 85 Madison Avenue, Borough of Manhattan, City of New York, and has been a practicing physician for upwards of twenty-five years, and has given special attention to the treatment and condition of the insane; that for many years he was superintendent of asylums for insane in the State of New York, and has had occasion to observe and treat many hundreds of persons who were afflicted with insanity; that he was President of the N. Y. State Commission in Lunacy for more than seven years and has been professor of mental diseases in the Bellevue Hospital Medical College for upwards of fifteen years.

Deponent further says that, together with Dr. Austin Flint, he made a personal examination of John Armstrong Chanler, a patient in the Bloomingdale Asylum, for the purpose of determining his mental condition; that the first examination was made on the 16th day of March, 1898, when deponent, together with the said Dr. Austin Flint, spent two hours in conversation with said Chan-
169 ler in his apartments at Bloomingdale; that at the time of said visit deponent carefully examined the said John Armstrong Chanler, who immediately began to explain his case to deponent and the said Dr. Flint, and said, among other things, that he was the victim of a gigantic conspiracy on the part of his relatives, who were jealous of his great mental and physical superiority to them; the other conspirators being prominent citizens of the City of New York, who were named by the said John Armstrong Chanler, including prominent lawyers and Judges of the said City; that he also said that they had subsidized the State and National Governments, which were arrayed against him; that his case was thoroughly prepared,

and it would be taken up by the Courts just as soon as the Spanish-American war scare was over; that he would expose a very prominent person, whom he named, as bogus prestige, and in this he would be "backed up by six million, five hundred thousand Silverities." He called our attention to large files of the New York World and other papers, which were piled up on the floor in one corner of his bedroom, which he said contained his case, and which he had edited from day to day as published, "blue penciling" all the lines, and that he would show them all up in due time. He also said that he was an expert in the art of boxing, in pool-playing and in pistol shooting; that he could hit with the pistol two out of three apples thrown into the air every time; also that he was an expert in mental strain and in mental impressions, depressions and exaltation, and that he excelled in mental and physical power; that he was a mental gladiator, a John L. Sullivan in
170 debate; that in controversy or debate he not only had never failed to hold his own, but had invariably knocked out his opponent. This great mental and physical power, he said, was due to his peculiar diet of bread and potatoes, with some other vegetables and fruit; and made other foolish and absurd statements. That the said Chanler, during the said interview, talked very rapidly, was exceedingly voluble, demonstrative, effusive and vociferous, and at times vulgar and profane. At the end of the conversation, which he terminated very abruptly, he appeared to be greatly exhausted as a result of the great mental excitement and strain he had been under for the period of two hours. He dismissed deponent and said Dr. Flint, after exacting from us a promise to return in the near future and finish the conversation.

Deponent further says that in pursuance to the said promise, and in order to make a further examination, deponent, together with the said Austin Flint, again visited the said John Armstrong Chanler in his apartment at Bloomingdale on April 9th, 1898; that at the said time the said Chanler was not completely dressed, and acted in a strange manner; that, among other things, he took from under the mattress of his bed a large volume of manuscript, to which he called our attention, stating that it was his case, and that no one but himself knew its contents, and that he intended to read it on the witness stand when his case came up in Court. He was as excited, effusive, and vociferous in his manner as on the first visit. At times he shouted at the top of his voice, saying among other things, that his system had gradually undergone a change until he had become a magnet and his stomach a Leyden jar. As proof of this
171 magnetic power, he showed us a much tarnished silver box, which he said he had carried in his pocket for more than two years without its having undergone the slightest change in color, until recently, that is, since he had become a magnet, when it suddenly became oxidized, "as you now see it." This change in color he said could not occur if the box were carried by any one else.

Deponent further says that at said time, he made a physical examination of the said John Armstrong Chanler, which showed that his pulse was 110, his hands cold and tremulous, pupils normal,

tongue coated and tremulous, and there was also a marked tremor of the labial muscles and of the eyelids when the eyes were closed. The reflexes were much diminished; there was no sign of ataxia or want of co-ordinating power; he stated that he slept well, that his bowels were regular, and that he was in perfect mental and physical health.

Deponent further says, from the examination so made, and from reading the history of the case in the hospital case book, he was at that time clearly of the opinion that the said John Armstrong Chanler was insane, and a proper subject for attention and treatment as such in an institution for the insane; that the form of insanity, from which he was suffering, was that known as paranoia, or chronic delusional insanity, which is well understood and which is characterized by morbidly extravagant ideas of self-importance and grandeur, together with delusions of conspiracy and persecution, and eventually transformation of the personality of the individual.

172 Deponent further says that subsequently, and on the 20th day of April, 1899, deponent, together with the said Dr. Austin Flint, made a further examination of the said John Armstrong Chanler, which lasted from about 6:30 to 8 o'clock in the evening of that day; and on that occasion found the said John Armstrong Chanler in his bed and in what seemed to be his usual condition. At first he did not complain of any physical ailment, but in reply to questions he said that on April 14th, 1899, he was suddenly seized with a remarkable sensation in the spine, just above the sacrum, that there was no pain, but the sensation was like the revolution of a buzz saw. He got up and moved freely about the room; careful examination of his spine showed that there was nothing the matter with it. He was wearing a porous plaster, which he said had given him instant relief. He said his nervous system was breaking down under his incarceration, and that the trouble with the spine started in his head. He said nothing about his spinal trouble except in answer to questions. In the opinion of deponent and of the said Dr. Austin Flint the said John Armstrong Chanler had no disease of the spine, and the difficulty complained of was a delusion, probably temporary.

Deponent further says that the said John Armstrong Chanler received him most cordially, was as voluble, excited and vehement in his language as in the examination hereinbefore referred to in April, 1898, talked most freely, and seemed to conceal nothing from deponent.

Deponent further says that the abnormal mental condition of the said John Armstrong Chanler is markedly intensified since the first examination made in the year 1898; that the said John

173 Armstrong Chanler now firmly believes that he is a reincarnation of Napoleon Banaparte, and that he recited to deponent and the said Dr. Austin Flint seven or eight sonnets of his own composition, saying that he had suddenly become the greatest poet of the world's history, excepting only Shakespeare. He went into a trance at the request of deponent, and gave the most vivid

illustration of the death of Napoleon. He had told deponent that he was Napoleon only when in the trance.

Deponent further says that the foregoing are a few instances of a most violent and tragic talk with the said John Armstrong Chanler, which lasted, as aforesaid, over an hour; and that the said talk was accompanied with denunciations of vile conspiracies against him.

Deponent further says that his opinions expressed at the time of the second interview hereinbefore referred to in April, 1898, have been confirmed, and that the said Chanler is now, in his opinion, a hopeless paranoiac, his mental disorder being incurable and progressive.

CARLOS F. MACDONALD.

Sworn to before me this 5th day of May, 1899.

WILLIAM WHITE WHITTAKER,
Notary Public, Kings County.

Certificate filed in New York County.

M. J. D.

174 Cover endorsed: Supreme Court, New York County. In the Matter of John Armstrong Chanler, an alleged incompetent person. (Original.) Order, Notice of motion petition and affidavits. Jay & Candler, Attorneys for Petitioners, No. 48 Wall Street, New York. Filed and Recorded May 9, 1899.

Supreme Court, County of New York.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

STATE OF NEW YORK,
County of New York, ss:

William White Whittaker being duly sworn deposes and says that he is a clerk in the office of Jay & Candler the attorneys
175 for the petitioners herein and is of the age of twenty-one years and upwards and that on the 9th day of May, 1899 at the Bloomingdale Asylum in the Village of White Plains, County of Westchester and State of New York at about seven o'clock in the afternoon of said day he served upon John Armstrong Chanler an alleged incompetent person a copy of an order, notice, petition and affidavits of which the foregoing are true copies by then and there delivering to and leaving with the said John Armstrong Chanler in person a true copy of the foregoing order, notice, petition and affidavits, and at the same time delivering to and leaving with Doctor Samuel B. Lyon the person in charge of the said Bloomingdale Asylum in person a true copy of the foregoing order, notice, petition and affidavits.

Deponent furthers says that on the 10th day of May, 1899, he served a copy of the order, notice, petition and affidavits of which the foregoing are true copies on Margaret Chanler at No. 317 West 74th Street in the Borough of Manhattan, City and County of New York, by then and there delivering to and leaving with the said Margaret Chanler in person a true copy of the said order, notice, petition and affidavits of which the foregoing are copies, and that on the 10th day of May, 1899, at No. 317 West 74th Street in the Borough of Manhattan, City and County of New York he served a copy of the order, notice, petition and affidavits of which the foregoing are copies on Alida Emmet by then and there delivering to and leaving with the said Alida Emmet in person a true copy of the said order, notice, petition and affidavits of which the foregoing are copies.

176 Deponent further says that he knew the persons so served as aforesaid to be the persons described in said petition as John Armstrong Chanler, an alleged incompetent person, Margaret Chanler and Alida Emmet.

Deponent further says that on the 10th day of May, 1899, he deposited in the General Post Office in the Borough of Manhattan, City of New York, three sets of copies of the foregoing copy, order, notice, petition and affidavits, each securely closed in a post-paid wrapper one directed to each of the following persons respectively at the places designated below, namely:

One to William A. Chanler, No. 16 Exchange Place, City of New York.

One to Robert W. Chanler, No. 16 Exchange Place, New York City.

One to Elizabeth W. Chapman, No. 16 Exchange Place, City of New York.

(Signed) WILLIAM WHITE WHITTAKER.

Sworn to before me this 17th day of May, 1899.

(Signed) JOHN H. BOGARDUS,
Notary Public, Kings County.

Certificate filed in New York County.

177 Cover endorsed: Supreme Court, New York County. In the Matter of John Armstrong Chanler an alleged incompetent person. Order, Notice of Motion, Petition, Affidavits and Proof of Service. Jay & Candler, Attorneys for petitioners, No. 48 Wall Street, New York. "Filed May 20, 1899."

At a Special Term of the Supreme Court, Part I, Held in and for the Borough of Manhattan, City and County of New York, at the County Court-house, on the 19th Day of May, 1899.

Present: Hon. Henry R. Beekman, Justice.

In the Mater of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

On reading the order made in the above entitled proceed-
178 ings dated on the 9th day of May, 1899, and entered in the office of the Clerk of the County of New York on the 9th day of May, 1899, and on reading the notice for this motion, the petition of Lewis S. Chanler and Winthrop Chanler, dated the 8th day of May, 1899, and the affidavits of Dr. Samuel B. Lyon, verified the 27th day of April, 1899, of Dr. M. Allen Starr, verified the 5th day of May, 1899, of William White Whittaker, verified the 8th day of May, 1899, and of Dr. Carlos F. MacDonald, verified the 5th day of May, 1899, all thereto annexed and all theretofore duly filed, and on reading and filing the affidavit of William White Whittaker, verified the 17th day of May, 1899, showing the service of the said order, notice of motion, petition and affidavits on John Armstrong Chanler, the alleged incompetent person, Margaret Chanler, Alida Emmet, William A. Chanler, Robert W. Chanler and Elizabeth W. Chapman, as required in and by the said order, and after hearing Flamen B. Candler, Esq., of counsel for the said petitioners, and no one appearing in opposition thereto, now on motion of Jay & Candler, attorneys for the said petitioners.

It is ordered that a commission in the nature of a writ de lunatico inquirendo be issued out of and under the seal of this Court in the usual from directed to David B. Ogden, Esq., counsellor-at-law, Allen Fitch, M. D., and George Sherman, all of the Borough of Manhattan, City of New York, and County of New York, to inquire by a jury of the said County whether the said John Armstrong Chanler is an incompetent person and incapable of managing his person and estate and as to the value of the real and personal estate
179 owned by the said John Armstrong Chanler, the alleged incompetent person, and also the property belonging to him which has been conveyed during his alleged incompetency, and to whom, and its value and the consideration paid therefor; and that the Sheriff of the County of New York be instructed in said commission to summon a jury in the manner required by law.

And it is further ordered, that the said commission be executed in the Borough of Manhattan, in the City and County of New York, and that previous notice of the time and place of such execution be given to the said John Armstrong Chanler, the alleged incompetent person, and to Dr. Samuel B. Lyon, the person having the charge and care of him, at least five days before the date thereof.

And it is further ordered that upon the execution of the said commission the said Dr. Samuel B. Lyon, the aforesaid person having the care or custody of the said John Armstrong Chanler, the

said alleged incompetent person, do produce him before the said Commissioners and jury, to be inspected and examined by them whenever the said Commissioners shall so demand.

And it is further ordered, that the Commissioners may in their discretion dispense with the attendance of the said John Armstrong Chanler, the said alleged incompetent person, before them and the jury unless the jurors, some or one of them, shall require his attendance before the jury.

180 And it is further ordered, that the said Commission issue in conformity with this order.

Enter,

[L. S.] HENRY R. BEEKMAN, *J. S. C.*

Cover endorsed: Supreme Court, New York County. In the Matter of John Armstrong Chanler, an alleged incompetent person. Order directing issuance of commission. Jay & Candler, Attorneys for Petitioners, Office and P. O. Adress, No. 48 Wall Street, New York City, N. Y. Motion granted and order signed. Filed and Recorded May 20, 1899.

181 New York Supreme Court, New York County.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

STATE OF NEW YORK,
County of New York, ss:

David B. Ogden, Allen Fitch and George Sherman, herein appointed by a writ de lunatico inquirendo, dated on the 23rd day of May, 1899, being each duly sworn for himself says that he will faithfully, honestly and impartially discharge the trust committed to him as Commissioner in the above entitled matter.

DAVID B. OGDEN.
ALLEN FITCH.
G. SHERMAN.

Sworn to before me this 5th day of June, 1899.

WILLIAM WHITE WHITTAKER,
Notary Public, Kings County.

Cert. filed in N. Y. Co.

182 Endorsed: New York Supreme Court, New York County. In the Matter of John Armstrong Chanler, an alleged incompetent person. (1) Oath of Commissioners. Jay & Candler, Attorneys for Petitioner, Office and P. O. Address, No. 48 Wall Street, New York City, N. Y. Filed June 12, 1899.

The People of the State of New York by the grace of God free and independent, to David B. Ogden, Esq., Counsellor at Law, Allen Fitch, M. D., and George Sherman, Esq., all of the Borough of Manhattan, City of New York and County of New York, Greeting:

Know ye that we with full faith in your prudence and competency have appointed you Commissioners and have assigned to you and by these presents do appoint and assign to you to inquire by a jury of the said County under the oaths of not less than twelve nor more than twenty-four indifferent persons whether John Armstrong Chanler, of the Borough of Manhattan, County of New York, now in Bloomingdale Asylum in the State of New York is an in-
183 competent person by reason of which infirmity he is incapable of managing his person and property, and if so from what time such infirmity dates and in what manner it has manifested itself, and whether while in such condition the said John Armstrong Chanler has alienated any lands and tenements or not and to what person or persons, when and where and after what manner, and the value thereof and the consideration paid therefor, and what lands and tenements, goods, chattels, and personal property as yet remain to him and of what value the lands and tenements retained by him are and what the issues and profits thereof amount to by the year and what is the value of his goods, chattels and personal property and who are the nearest heirs and next of kin of the said John Armstrong Chanler, and who would be entitled to his estate in case of his death and the age of each.

Wherefore we command you that at a certain day and place in the Borough of Manhattan in the City and County of New York or at certain days and places in said Borough which you shall for that purpose appoint you diligently make inquisition into the facts hereinbefore recited and that you cause previous notice of the time and place of execution of this commission to be given to the said John Armstrong Chanler and to Dr. Samuel B. Lyon, the person having the charge and care of him, of at least five days before the said day and place appointed by you, and that whenever you shall so demand, the said Dr. Samuel B. Lyon shall produce before you and a jury the said John Armstrong Chanler to be inspected and examined by you and the said jury, but that in your discretion you may dispense with the attendance of the said John Arm-
184 strong Chanler before you and the jury unless the jurors some or one of them shall require the attendance of the said John Armstrong Chanler, before the jury, and that you report the inquisition which you shall thereupon make under your hands and seals, together with those of the persons by whom it shall be made, distinctly and plainly and without delay, to our Supreme Court in and for the County of New York, together with this writ, and

We hereby command the Sheriff of the County of New York to notify not less than twelve nor more than twenty-four indifferent persons qualified to serve and not exempt from serving as trial jurors in the Supreme Court of the State of New York to appear be-

fore you at such specified time and place within the said County of New York to make inquiry as commanded by this commission.

Witness Honorable Miles Beach, one of the Justices of our said Supreme Court of the State of New York at the New York County Court House the 23 day of May, 1899.

L. G. M.

[L. S.] WM. SOHMER, *Clerk.*

JAY & CANDLER,
Attorneys for Petitioners, 48 *Wall Street, New York City.*

185 Cover endorsed: Supreme Court, New York County. In the Matter of John Armstrong Chanler, an alleged incompetent person. (Original.) Commission. Jay & Candler, Attorneys for petitioners, No. 48 Wall Street, New York City. Filed June 15, 1899.

Ten Cents Internal Revenue Stamp.

Supreme Court for the County of New York.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

I, William Sohmer, Clerk of the said County, and Clerk of the Supreme Court of said State for said County,

Do certify, that the oath of David B. Ogden, Allen Fitch
186 and George Sherman in above matter, duly executed, was filed in my office on the 12th day of June, 1899.

Dated, New York, June 12th, 1899.

[L. S.] WM. SOHMER, *Clerk.*

New York Supreme Court, New York County.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

STATE OF NEW YORK,
County of New York, ss:

David B. Ogden, Allen Fitch and George Sherman herein appointed by a writ de lunatico inquirendo, dated on the 23rd day of May, 1899, being each duly sworn for himself says that he will faithfully, honestly and impartially discharge the trust committed to him as Commissioner in the above entitled matter.

DAVID B. OGDEN.
ALLEN FITCH.
G. SHERMAN.

Sworn to before me this 5th day of June, 1899.

WILLIAM WHITE WHITTAKER,
Notary Public, Kinge County.

Cert. filed in N. Y. Co.

187 Cover endorsed: New York Supreme Court, New York County. In the Matter of John Armstrong Chanler, an alleged incompetent person. Oath of Commissioners. Jay & Candler, Attorneys for Petitioners, Office and P. O. Address, No. 48 Wall Street, New York City, N. Y. Filed June 15, 1899.

Panel of jurors summoned under and pursuant to the annexed precept.

THOMAS J. DUNN, *Sheriff.*

Julius Weil, George A. Toop, Richard Ranft, William H. Porter, Emanuel B. H. Myers, Camell C. Roumage, Joseph S. Stout, Raphael M. Matteson, Philip A. Smyth, Henry Glick, Robert Waller, Jr., Michael Callaghan, Antonio Rasines, Charles A.
188 Wainwright, Benjamin C. Williams, William M. Schwenker, Richard H. Williams, Allen W. Godwin, John W. Smith, Philip A. Smyth, R. C. Veit, Cornelius F. Vanderbilt, Cornelius C. Cuyler, Francis Draz.

The execution of the within precept will appear by the panel of jurors, hereto annexed.

THOMAS J. DUNN, *Sheriff.*

Five Cents Internal Revenue Stamp.
Five Cents Internal Revenue Stamp.
Five Cents Internal Revenue Stamp.
Ten cents Internal Revenue Stamp.

189 New York Supreme Court, New York County.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

To Thomas J. Dunn, Esq., Sheriff of the County of New York:

By virtue of a commission in the nature of a writ de lunatico inquirendo issued out of and under the seal of the Supreme Court of the State of New York in and for the County of New York, bearing date the 23rd day of May, 1899, to us whose names are hereunder written directed to inquire if John Armstrong Chanler of the Borough of Manhattan, County of New York, now in Bloomingdale Asylum, is an incompetent person or not, these are to require you to cause to come and appear before us not less than twelve nor more than twenty-four indifferent persons qualified to serve and not exempt from serving as trial jurors in the Supreme Court of the State of New York on the 12th day of June, 1899, at four o'clock in the afternoon of the same day, then and there upon their oaths to inquire whether the said John Armstrong Chanler is an incompetent person and of all such matters and things as shall be

given them in charge by virtue of the said commission, and hereof fail not at your peril.

190 Given under our hands and seals the 31st day of May, 1899.

(Sd.)

DAVID B. OGDEN [L. S.]
ALLEN FITCH [L. S.]
G. SHERMAN [L. S.]

Cover endorsed: New York Supreme Court, New York County. In the matter of John Armstrong Chanler, an alleged incompetent person. Precept. Jay & Candler, Attorneys for Petitioners, Office and P. O. Address, No. 48 Wall Street, New York City, N. Y. Filed June 15, 1899. Received at Sheriff's Office June 7—2:36 P. M., 1899. County of New York, N. Y.

An inquisition taken at the County Court House in the Borough of Manhattan, in the County of New York, on the twelfth day of June, 1899, before David B. Ogden, Esq., counsellor at law, Allen Fitch, M. D., and George Sherman, Esq., Commissioners appointed by virtue of a Commission in the nature of a writ de lunatico

191 inquirendo issued out of and under the seal of the Supreme Court of the State of New York on the 23rd day of May, 1899, directed to the said Commissioners to inquire by a jury of the said Court, among other things, whether John Armstrong Chanler of the Borough of Manhattan, County of New York, is an incompetent person, by reason of which infirmity he is incapable of managing his person and property, and if so, from what time such infirmity dates, and in what manner it has manifested itself, under the oaths of Julius Weil, William H. Porter, Emanuel B. H. Myers, Camille C. Roumage, Joseph S. Stout, Raphael M. Matteson, Philip A. Smyth, Henry Glick, Robert Waller, Jr., Michael Callaghan, Antonio Rasines, Charles A. Wainwright, George H. Toop, Benjamin C. Williams and Richard Ranft being fifteen indifferent persons of the said County who being duly summoned and sworn and charged upon their oaths, say:

That the said John Armstrong Chanler at the time of taking this inquisition is a lunatic and is of unsound mind and does not enjoy lucid intervals so that he is incapable of managing his person and property, and that he has been in the same state of lunacy since the 10th day of March, 1897, and what occasioned such mental alienation or his present lunacy, the jurors aforesaid have no information and know not.

That the said John Armstrong Chanler is now confined in the Bloomingdale Asylum at White Plains in the State of New York, he having been committed there on the 10th day of March, 1897, under proceedings taken in accordance with the laws of this State.

That during the incompetency of the said John Armstrong Chanler he conveyed his undivided one-eighth interest in

192 and to the real estate situated in the block bounded by 10th and 11th Avenues and 14th and 15th Streets in the

City of New York with the bulkheads and dock rights on the westerly side of 11th Avenue between 14th and 15th Streets by two certain deeds in consideration of one hundred thousand dollars to his brothers and sisters, one thereof to Winthrop Chanler, Lewis S. Chanler, petitioners herein, William A. Chanler, Margaret Chanler, Elizabeth W. Chapman and Alida Emmet, and the other to the New York Life Insurance and Trust Company, as Trustee under a deed of trust, for Robert W. Chanler, another brother, and that at the time of such conveyances a mortgage with the accrued interest thereon amounting to fifty-two thousand one hundred and twenty-four dollars which was a lien on the share of the said John Armstrong Chanler, was satisfied, the balance, namely, the sum of forty-seven thousand eight hundred and seventy-six dollars was paid over to and received by the said John Armstrong Chanler in cash.

And the jurors aforesaid, under their oaths aforesaid do further say that the said John Armstrong Chanler owns the following lands and tenements:

Premises known as No. 298 Broadway in the City of New York, valued at	$280,000.00
Value of his equity over and above amount due on new buildings and mortgages, about	100,000.00
Value of his equity in 426 Third Avenue, 362 Third Avenue and 360 Third Avenue and 252 East Houston Street, aggregating about	30,000.00
St. Margaret's Home, Red Hook, value	10,000.00
193 Ore lot, Barrytown, New York, equity worth	40,000.00
Merry Mills Farm, Cobham, Virginia valued at	6,500.00
Hawkwood Stock Farm, mortgage for $12,000, no equity.	
Betty A. Badger farm at Roanoke Rapids, N. C.	3,000.00

In addition to his interest in real estate above referred to the said John A. Chanler receives in the neighborhood of five thousand dollars per year from the Executors and Trustees under the last will and testament of his father, John Winthrop Chanler.

And the said John Armstrong Chanler is the owner of the following goods, chattels and personal property, to wit:

737 shares of the Self Threading Sewing Machine Company, par value $100, cost about	$65,925.00
856 Preferred and 230 common stock of the United Industrial Company, and 3540 shares of the Roanoke Rapids Power Company par value per share $100, total cost about	108,000.00
Claim against Roanoke Rapids Power Company on lands at Roanoke Rapids, North Carolina, valued at	2,300.00
Mortgage on the Industrial Company's mill and lands at Roanoke Rapids, North Carolina	35,112.64
Interest to date	1,562.51
194 United Industrial Company's notes secured by a mortgage to Prescott Hall Butler, Trustee	8,000.00
Interest to date	394.67

Amount due by the Industrial Company for other lands not secured and interest	1,047.91
Amount due to Self Threading Sewing Machine Company valued at	26,441.24
Assignment of insurance policy on life of D. B. Miller for loan of 546.50; 5 shares of the Transatlantic Publishing Co. par value $100, value about	500.00
Paintings	5,000.00
Amount held by the United Trust Company for Paris Prize	55,247.50

That the said John Armstrong Chanler was married, but is now divorced, and since his divorce his wife has remarried and is now known as Princess Troubetskoy and the only heirs at law and next of kin and persons who would be entitled to his entire estate in case of his death, are as follows:

Winthrop Chanler, a brother, Lewis S. Chanler, a brother } the petitioners herein.
William A. Chanler, a brother.
Robert W. Chanler, a brother.
Margaret L. Chanler, a sister.
Elizabeth W. Chapman, wife of John Jay Chapman, a sister.
Alida B. Emmet, wife of C. Temple Emmet, a sister, all of whom are of full age.

In testimony whereof as well the said Commissioners and
195 jurors aforesaid have to this inquisition set their hands and seals the day and year first above written.

DAVID B. OGDEN, [L. S.]
ALLEN FITCH, [L. S.]
G. SHERMAN, [L. S.]
Commissioners.

JULIUS WEIL, [L. S.]
RICHD. RANFT, [L. S.]
BENJAMIN C. WILLIAMS, [L. S.]
E. B. H. MYERS, [L. S.]
HENRY GLICK, [L. S.]
JOS. S. STOUT, [L. S.]
PHILIP A. SMYTH, [L. S.]
ANTONIO RASINES, [L. S.]
CHAS. A. WAINRIGHT, [L. S.]
R. WALLER, JR., [L. S.]
WILLIAM H. PORTER, [L. S.]
C. C. ROUMAGE, [L. S.]
R. M. MATTESON, [L. S.]
GEO. H. TOOP, [L. S.]
MICHAEL CALLAGHAN, [L. S.]
Jurors.

196 Cover endorsed: Supreme Court, New York County. In the Matter of John Armstrong Chanler an alleged incompetent person. Inquisition. Jay & Candler, attorneys for petitioners, 48 Wall Street, New York City. Filed June 15, 1899.

New York Supreme Court, New York County.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

To John Armstrong Chanler and Dr. Samuel B. Lyon:

SIRS: Please take notice that a Commission heretofore issued out of and under and by order of the Supreme Court and dated the 23rd day of May, 1899, to inquire whether John Armstrong Chanler is an incompetent person and by reason of which infirmity he
197 is incapable of managing his person and property and to us directed as Commissioners, will be executed at the County Court House in the Borough of Manhattan and City of New York on the 12th day of June, 1899, at four o'clock in the afternoon of that day.

Dated, New York, May 31st, 1899.

Yours, &c.,

DAVID B. OGDEN,
ALLEN FITCH,
G. SHERMAN,
Commissioners.

STATE OF NEW YORK,
County of New York, ss:

William White Whittaker, being duly sworn says that he is a clerk in the office of Jay & Candler, the attorneys for the petitioners in the within entitled matter, and is of age of twenty-one years and upwards, and that on the 6th day of June, 1899, at about 2 o'clock in the afternoon of that day, at the Bloomingdale Asylum, in the Village of White Plains, County of Westchester and State of New York, he served the within notice on John Armstrong Chanler, an alleged incompetent person, by then and there delivering to and leaving with the said John Armstrong Chanler, a true copy of the within notice.

Deponent further says that at the same time and place he served the within notice on Dr. Samuel B. Lyon, the Superintendent of the Bloomingdale Asylum, in whose charge the said John Armstrong Chanler, an alleged incompetent person, is, by then and there delivering to and leaving with the said Dr. Samuel B. Lyon a true copy of the within notice.

198 Deponent further says that he knew the said John Armstrong Chanler and Dr. Samuel B. Lyon, so served as aforesaid, to be the persons to whom the within notice is addressed.

WILLIAM WHITE WHITTAKER.

Sworn to before me this 9th day of June, 1899.
JOHN H. BOGARDUS,
Notary Public, Kings County.

Certificate filed in New York County.

Cover endorsed: New York Supreme Court, New York County. In the Matter of John Armstrong Chanler an alleged incompetent person. Notice of Hearing. Jay & Candler, Attorneys for petitioners, Office and P. O. Address, No. 48 Wall Street, New York City N. Y. Filed June 15, 1899.

199 New York Supreme Court, County of New York.

Before Commissioners David B. Ogden, Allen Fitch, M. D., George Sherman, and a Sheriff's Jury.

In the Matter of the Petition of WINTHROP CHANLER and LEWIS A. CHANLER, for the Appointment of a Committee of the Person and Estate of JOHN ARMSTRONG CHANLER, an Alleged Incompetent.

NEW YORK, June 12th, 1899—4 o'clock p. m.

Appearances:

Messrs. Jay & Candler, appear for Winthrop Chanler and Lewis A. Chanler, the Petitioners,

Mr. Flamen B. Candler and Mr. Egerton L. Winthrop, Jr., of Counsel.

No appearance on the part of the alleged lunatic.

Mr. Candler:

GENTLEMEN OF THE JURY: The case you are brought here to consider and in which this commission has been issued for the three Commissioners now presiding and a Sheriff's Jury, is that of John Armstrong Chanler, and is to determine and it is to inquire into whether John Armstrong Chanler is competent to take charge of his affairs.

Mr. Chanler was found, as far back as March 10th, 1897,
200 to be of unsound mind, and was committed on the certificates of Doctors Starr and Fuller, two physicians, and the proper authorities, to the Bloomingdale Asylum, where he has been and now is; and his disease has been progressive and we are here to show to you that he is entirely incompetent to take charge of his affairs; we shall also show what his estate is and that you may find that a committee be appointed to take charge of his person and estate. He is a man of means, and we will show what his estate consists of.

This proceeding is taken by the petitioners, Winthrop Chanler and Lewis A. Chanler, brothers of the alleged incompetent and it is a matter of considerable importance to the members of the family and relatives of the afflicted man and we will call on the stand a

number of prominent physicians and we will ask you to assist David B. Ogden, Esq., Dr. Allen Fitch and Mr. George Sherman, who have been appointed by the Supreme Court, with your assistance, to determine whether or not the petition of the petitioners should be granted. (Reads petition.)

We shall call several other prominent physicians who are specialists in their departments of learning and show that the disease of which the alleged incompetent, John Armstrong Chanler, is suffering is progressive and incurable. We will show by his brothers and associates in business what his estate consists of and after adducing this testimony we shall ask you to grant this petition.

The Court has authorized the Commissioners or any of the jurors to have Mr. Chanler produced here in Court before you, to see him if you wish to put him on the stand to hear what he has to
201 say. He is not here today and we shall not bring him here unless we have the petition of one of the jurors or Commissioners who should like to see him—if any, of the Commissioners or any of the jurors would like to have him put on the stand we will have him brought here and put him on the stand. Dr. Lyon, of the Bloomingdale Asylum, will tell you why he is not here today. He has stated to him that he has an infirmity which makes it impossible for him to be here today. The doctor stated that he suffers from delusion, that the infirmity may not be real.

If after hearing this testimony you want him brought here he will be brought here at another session of the inquest and then you can determine from his own testimony as to whether this petition should be granted and as to whether he is responsible and competent to take charge of his affairs.

Mr. Candler: I will offer in evidence a notice addressed to Mr. Chanler, to Dr. Lyon, in whose custody he is, notifying him of this hearing, personal service upon them both on June 6th, 1899.

The notice is admitted in evidence and marked Petitioner's Exhibit No. 1, June 12th, 1899.

Dr. SAMUEL B. LYON, called as a witness in behalf of the petitioners, was duly sworn, and testified as follows:

By Mr. Candler:

Q. What is your full name, doctor?
A. Samuel B. Lyon.
Q. Where do you reside?
A. At White Plains, New York.
Q. What is your profession?
A. Doctor, physician.
Q. How long have you been a physician?
202 A. Twenty years.
Q. How long have you been occupied—how have you been occupied during that time, in your profession?
A. In caring for and treating the insane.
Q. Have you been connected with any asylum, if so, with what asylum, and in what capacity?

A. I was connected for seven years—physician to the Government Hospital for the Insane—I was connected with the Government Hospital for the Insane at Washington, and since 1886, with the Bloomingdale Asylum; that is thirteen years; since 1890, I have been Superintendent of the Bloomingdale Asylum.

Q. You are the Superintendent of the Bloomingdale Asylum and have been since 1890?

A. Yes, sir.

Q. Are you acquainted with John Armstrong Chanler, the alleged incompetent?

A. Yes, sir; I am.

Q. How long have you known him?

A. Since his admission to the Bloomingdale Asylum.

Q. When was he admitted?

A. March 3rd, 1897.

Q. Have you the commitment papers with you?

A. I have a copy.

Q. Please produce them?

Witness produced the commitment papers.

Witness: This is a copy which I will swear is a correct copy of the commitment of Mr. Chanler.

Q. On whose certificate was he committed?

A. Doctors Starr and Fuller and the commitment was made by Judge Gildersleeve, of the Supreme Court.

The commitment is offered in evidence.

It is admitted and marked "Petitioners' Exhibit No. 2, June 12th, 1899."

203 PETITIONERS' EXHIBIT 2.

STATE OF NEW YORK,
State Commission in Lunacy:
Bloomingdale:

I, the superintendent of Bloomingdale do hereby certify that the document together with the papers annextd thereto on which the words of this certificate are impressed, is a true copy of the orders and all the papers upon which the within named patient was admitted to this hospital.

S. B. LYON, M. D.,
Physician in Charge.

(Signed) S. B. LYON,
Medical Superintendent.

STATE OF NEW YORK,
State Commission in Lunacy:

Petition, Certificate of Lunacy and Orders.

This blank, consisting of five parts, is furnished by the State Commission in Lunacy pursuant to section 60 of chapter 545 of the Laws of 1896, which among other things provides as follows:

"The Commission shall prescribe and furnish blanks for such certificates and petitions, which shall be made only upon such blanks."

This blank, both for originals and copies, may be obtained upon application to the commission, county clerks, superintendents of the poor, commissioners of charities, superintendents of state hospitals and physicians in charge of private institutions for the insane, and is according to forms prescribed by the commission, July 1,
204 1896, from which date such forms are in force.

The blanks should be carefully read and properly filled out to insure the commitment of a patient. Medical examiners in lunacy are required to fill out only the certificate of lunacy. It is expected that the petition and necessary orders will be filled out by the person making the application, a superintendent of the poor, a clerk of the court or a judge granting the order.

If necessary, extra sheets may be used, not exceeding in size those of this blank, which may be readily inserted after removing the stitches. When an extra sheet is added reference should be made upon it to the page and the line number.

For convenience of reference sections 60, 61, 62, 63 and 64 of article 3 of the Insanity Law constituting chapter 28 of the general laws as enacted by chapter 545 of the Laws of 1896, being the principal sections relating to the commitment of the insane, are here inserted:

Section 60. Order for commitment of an insane person.—A person alleged to be insane and who is not in confinement on a criminal charge, may be committed to and confined in an institution for the custody and treatment of the insane, upon an order made by a judge of a court of record of the city or county, or a justice of the supreme court of the judicial district, in which the alleged insane person resides or may be, adjudging such person to be insane, upon a certificate of lunacy made by two qualified medical examiners in lunacy, accompanied by a verified petition therefor, or upon such certificate and petition, and after a hearing to determine such question, as provided in this article. The commission shall prescribe and
205 furnish blanks for such certificates and petitions, which shall be made only upon such blanks. An insane person shall be committed only to a state hospital, a duly licensed institution for the insane, or the Matteawan State hospital, or to the care and custody of a relative or committee, as hereinafter provided. No idiot shall be committed to or confined in a state hospital. But any epileptic or feeble-minded person becoming insane may be committed

as an insane person to a state hospital for custody and treatment therein.

§61. Medical examiners in lunacy; certificates of lunacy.—The certificate of lunacy must show that such person is insane and must be made by two reputable physicians, graduates of an incorporated medical college, who have been in the actual practice of their profession at least three years, and have filed with the commission a certified copy of the certificate of a judge of a court of record, showing such qualifications in accordance with forms prescribed by the commission.

Such physicians shall jointly make a final examination of the person alleged to be insane within ten days next before the granting of the order. The date of the certificate of lunacy shall be the date of such joint examination. Such certificate of lunacy shall be in the form prescribed by the commission, and shall contain the facts and circumstances upon which the judgment of the physicians is based and show that the condition of the person examined is such
206 as to require care and treatment in an institution for the care, custody and treatment of the insane.

Neither of such physicians shall be a relative of the person applying for the order or of the person alleged to be insane, or a manager, superintendent, proprietor, officer, stockholder, or have any pecuniary interest, directly or indirectly or be an attending physician in the institution to which it is proposed to commit such person.

§62. Proceedings to determine the question of insanity.—Any person with whom an alleged insane person may reside or at whose house he may be or the father or mother, husband or wife, brother or sister, or the child of any such person, and any overseer of the poor of the town, and superintendent of the poor of the county in which any such person may be, may apply for such order, by presenting a verified petition containing a statement of the facts upon which the allegation of insanity is based, and because of which the application for the order is made. Such petition shall be accompanied by the certificate of lunacy of the medical examiners, as prescribed in the preceding section. Notice of such application shall be served personally, at least one day before making such application, upon the person alleged to be insane, and if made by an overseer or superintendent of the poor, also upon the husband or wife, father or mother or next of kin of such alleged insane person, if there be any such known to be residing within the county, and if not, upon the person with whom such alleged insane person many reside, or at whose house he may be. The judge to whom the application is to be made may dispense with such personal service, or may
207 direct substituted service to be made upon some person to be designated by him. He shall state in a certificate to be attached to the petition his reason for dispensing with personal service of such notice, and if substituted service is directed, the name of the person to be served therewith.

The judge to whom such application is made may, if no demand is made for a hearing in behalf of the alleged insane person, proceed forthwith to determine the question of insanity, and if satisfied that

the alleged insane person is insane, may immediately issue an order for the commitment of such person to an institution for the custody and treatment of the insane. If, however, it appears that such insane person is harmless and his relatives or a committee of his person are willing and able to properly care for him, at some place other than such institution, upon their written consent, the judge may order that he be placed in the care and custody of such relatives or such committee. Such judge may, in his discretion, require other proofs in addition to the petition and certificate of the medical examiners.

Upon the demand of any relative or near fried in behalf of such alleged insane person, the judge shall, or he may upon his own motion, issue an order directing the hearing of such application before him at a time not more than five days from the date of such order, which shall be served upon the parties interested in the application and upon such other persons as the judge, in his discretion, may name. Upon such day, or upon such other day to which the proceeding shall be regularly adjourned, he shall hear the testi-
208 mony introduced by the parties and examine the alleged insane person if deemed advisable in or out of court, and render a decision in writing as to such person's insanity. If it be determined that such person is insane, the judge shall forthwith issue his order committing him to an institution for the custody and treatment of the insane, or make such other order as is provided in this section. If such judge can not hear the application he may, in his order directing the hearing, name some referee, who shall hear the testimony and report the same forthwith, with his opinion thereon, to such judge, who shall, if satisfied with such report, render his decision accordingly. If the commitment be made to a state hospital, the order shall be accompanied by a written statement of the judge as to the financial condition of the insane person and of the persons legally liable for his maintenance as far as can be ascertained. The superintendent of such state hospital shall be immediately notified of such commitment, and he shall, at once, make provisions for the transfer of such insane person to such hospital.

The petition of the applicant, the certificate in lunacy of the medical examiners, the order directing a further hearing as provided in this section, if one be issued, and the decision of the judge or referee and the order of commitment shall be presented at the time of the commitment to the superintendent or person in charge of the institution to which the insane person is committed, and verbatim copies shall be forwarded by such superintendent or person in charge and filed in the office of the state commission in lunacy. The relative, or committee to whose care and
209 custody any insane person is committed, shall forthwith file the petition, certificate and order, in the office of the clerk of the county where such order is made, and transmit a certified copy of such papers, to the commission in lunacy, and procure and retain another such certified copy.

The superintendent or person in charge of any institution for the care and treatment of the insane may refuse to receive any person

upon any such order, if the papers required to be presented shall not comply with the provisions of this section, or if in his judgment, such person is not insane within the meaning of this statute, or if received, such person may be discharged by the commission. No person shall be admitted to any such institution under such order after the expiration of five days from and inclusive of the date thereof. Notwithstanding the requirements of this section that an alleged insane person be duly committed by an order of the court, in a case where the condition of such person is such that it would be for his benefit to receive immediate care and treatment, or if he is dangerously insane so as to render it necessary for public safety that he be immediately confined, he shall be forthwith received by a state institution authorized by law to care for the insane. In such case such insane person shall be so received by such institution upon a certificate of lunacy, executed by two medical examiners in lunacy after the examination and in the manner provided in the preceding section, and upon a petition made by the person authorized by this section to apply to a court for an order of commitment. By virtue of such certificate of lunacy and such petition such insane
210 person may be retained in such institution for a period not to exceed five days. Prior to the expiration of such time an order for his commitment must be obtained in the manner provided by this section. The certificate of lunacy executed by such physicians must contain adequate reasons why the insane person should be immediately received in an institution for the insane for treatment. The superintendent or person in charge of any such institution may refuse to receive such insane person upon such certificate and petition, if in his judgment the reasons stated in the certificate, or the condition of the patient, are not sufficient, or is not of such character, as to make it necessary that the patient should receive immediate treatment. (As amended by ch. 146, L. 1903.)

§63. Appeal from order of commitment.—If a person ordered to be committed, pursuant to this chapter, or any friend in his behalf, is dissatisfied with the final order of a judge or justice committing him he may, within ten days after the making of such order appeal therefrom to a justice of the supreme court other than the justice making the order, who shall cause a jury to be summoned as in case of proceedings for the appointment of a committee for an insane person, and shall try the question of such insanity in the same manner as in proceedings for the appointment of a committee. Before such appeal shall be heard, such person shall make a deposit or give a bond, to be approved by a justice of the supreme court, for the payment of the costs of the appeal, if the order of commitment is sustained. If the verdict of the jury be that such person is insane, the justice shall certify that fact and make an order of commit-
211 ment as upon the original hearing. Such order shall be presented, at the time of the commitment of such insane person, to the superintendent or person in charge of the institution to which the insane person is committed and a copy thereof shall be forwarded to the commission by such superintendent or person in charge and filed in the office thereof. Proceedings under the order

shall not be stayed pending an appeal therefrom, except upon an order of a justice of the supreme court, and made upon a notice and after a hearing, with provisions made therein for such temporary care or confinement of the alleged insane person as may be deemed necessary.

If a judge shall refuse to grant an application for an order of commitment of an insane person proved to be dangerous to himself or others, if at large, he shall state his reasons for such refusal in writing, and any person aggrieved thereby may appeal therefrom in the same manner and under like conditions as from an order of commitment.

§64. Costs of commitment.—The costs necessarily incurred in determining the question of the insanity of a poor or indigent person and in securing his admission into a state hospital, and the expense of providing proper clothing for such person, in accordance with the rules and regulations adopted by the commission, shall be a charge upon the town, city or county securing the commitment. Such costs shall include the fees allowed by the judge or justice ordering the commitment to the medical examiners. If the person sought to be committed is not a poor or indigent person, the
212 costs of the proceedings to determine his insanity and to secure his commitment, as provided in this article, shall be a charge upon his estate, or shall be paid by the persons legally liable for his maintenance. If in such proceedings, the alleged insane person is determined not to be insane, the judge or justice may, in his discretion, charge the costs of the proceedings to the person making the application for an order of commitment, and judgment may be entered for the amount thereof and enforced by execution against such person.

Petition.

In the Matter of an Application for the Commitment of JOHN ARMSTRONG CHANLER, an Alleged Insane Person.

STATE OF NEW YORK,
State Commission in Lunacy:

To the Hon. Henry A. Gildersleeve, Justice or Judge of the Supreme Court of the State of New York:

The petition of Winthrop A. Chanler, Lewis S. Chanler and A. A. Carey, respectfully shows:

1. That the Messrs. Chanler *is a* resident of the City of New York, *of* N. Y., in the county of N. Y., and is (If petition
213 is made by a public officer, so state, and of what county, city or town) Mr. Carey is a resident of Boston, Mass.

2. That they are (If petition is made by a friend, so state; if by a realtive, state relationship) brothers and cousins respectively of J. A. Chanler the alleged insane person.

3. That the said alleged insane person resides or now is at the

house of Kensington Hotel at 5th Ave. and 15th St., county of New York.

4. That the facts upon which the application is based are as follows:

(The petitioner should state any facts observed by or any information known to him, which would tend to show the existence of insanity, such as excitement, violence, despondency, irrational acts and declarations, etc.)

Mr. J. A. Chanler has for several months while at his home in Virginia been acting in a very erratic manner. He has limited himself to a peculiar diet, he has burned his hand by carrying hot coals in it; he has devised many peculiar projects, such as a a roulette scheme to beat Monte Carlo, and he gives as a reason for these and other acts that he is inspired by a spirit which directs him. For the past three weeks in New York he has constantly talked of this delusion, has neglected his health, has injured his person, has been at times wildly excited.

5. That they verily believes it to be for the best interests of the said alleged insane person that an order be granted directing his commitment to an institution for the insane.

214 Wherefore, upon the foregoing facts and the certificate of lunacy hereto annexed, your petitioner- prays that an order be granted adjudging the said alleged insane person to be insane and committing him to Bloomingdale Asylum at White Plains.

(It is essential that the official title of the institution should be correctly inserted.)

Dated March 10th, 1897.

(Signed) WINTHROP A. CHANLER AND
LEWIS S. CHANLER,
No. 16 *Exchange Place,*
(City, Village, or Town of) *New York.*
(Petitioner's signature and address.)

(Signed) ARTHUR A. CAREY,
29 *Fairfield St., Boston, Mass.*

STATE OF NEW YORK,
County of New York,
City, Town or Village of New York, ss:

W. A. Chanler, Lewis S. Chanler & A. A. Carey, being duly sworn, depose and say that they have read the foregoing petition and knows the contents thereof, and that the same is true to the knowledge of deponents, except as to the matters therein stated
215 to be alleged on information and belief, and as to ahose matters they believes it to be true.

(Signed) WINTHROP A. CHANLER.
LEWIS S. CHANLER.
ARTHUR A. CAREY.
(Petitioner's signature.)

Subscribed and sworn to before me this 10th day of March, 1897.
(Signed) H. A. GILDERSLEEVE, *J. S. C.*

Certificate of Justice or Judge Relating to Personal Service.

Before the Hon. Henry A. Gildersleeve, Justice or Judge of Supreme Court, County, City, or Town of New York, on the 10th Day of March, 1897.

In the Matter of an Application for the Commitment of JOHN ARMSTRONG CHANLER, an Alleged Insane Person.

I do hereby certify that I have dispensed with personal service, or that I have directed substituted service as provided by law upon the person hereinafter named, for the following reasons:
The patient is in such a state of excitement and is so easily made dangerous to himself and to others by any criticism or op-
216 position to his delusions that a personal service would be attended by great danger.
(Signed) H. A. GILDERSLEEVE, *J. S. C.*

The following should be filled out only by two medical examiners qualified according to section 60:

Certificate of Lunacy.

STATE OF NEW YORK,
County of New York,
City, Town, or Village of New York, ss:

Statement of Facts.

1. Patient resides at Kensington Hotel, N. Y., County of N. Y.; age, 34 years; nativity (if foreign, how long in U. S.), U. S.; sex, male; color, white; occupation, lawyer; divorced. (Strike out words not required.)
2. Birthplace of father, New York; of mother, New York.
3. Number of previous attacks, one; present attack began in November, 1896 (If the patient has ever been an inmate of an institution for the insane, state when and where, and whether discharged, recovered or otherwise.) Was confined in Neuilly near Paris, France, some years ago for a short time.
4. Was the present attack gradual or rapid in its onset? Gradual.
5. What is the patient's general physical condition? Poor (If afflicted with any infirmity or disease other than insanity,
217 state it.) Anæmic and he is emaciating.
6. Is the patient cleanly or uncleanly in personal habits? Cleanly.
7. Is the patient violent, dangerous, destructive, excited or depressed, homicidal or suicidal? (If either homicide or suicide has

been attempted or threatened, it should be so stated.) Violent, excited, is armed, threatens people, is dangerous.

8. What is the supposed cause of the insanity? (State both predisposing and exciting causes, if known) General nervous hereditary influences much family anxiety.

9. Has the patient insane relatives? If so, state the degree of consanguinity, and whether paternal or maternal. One aunt (paternal).

10. State the patient's habits as to the use of liquor, tobacco, opium or other drug, and whether excessive or moderate. He does not indulge in any bad habits.

We, M. Allen Starr, M. D., a legal resident of 22 W. 48th St., N. Y., County of N. Y., State of New York, and Eugene Fuller, M. D., a legal resident of 252 Lexington Ave., N. Y., County of N. Y., and State aforesaid, being severally and duly sworn, do severally certify and each for himself certifies, with the exceptions which are hereinafter noted, as follows:

1. I am a graduate of an incorporated medical college, and a qualified medical examiner in lunacy; a certificate of my qualifications as such examiner, or certified copy thereof, is on file
218 in the office of the State Commission in Lunacy, and I have received from its secretary an acknowledgment of the receipt of the same.

2. I have with care and diligence personally observed and examined on the date of this certificate, namely, on the 10th day of March, 1897, John Armstrong Chanler, now residing or being at the Kensington Hotel, N. Y., in the County of N. Y., and as a result of such joint examination find, and hereby certify to the fact, that he is insane and a proper subject for custody and treatment in some institution for the insane, as an insane person under the provisions of the statute.

3. I have formed the above opinion upon the subjoined facts:

a. Facts indicating insanity personallly observed by me, as follows:

The patient said (State what the patient said, if anything, in presence of the examiners):

That the color of his eyes, the shape of his nose and ears has been changed, so that he resembles Napoleon; that this was done by the spirit which acts upon and through him, that he is inspired to lead a holy war in Europe; that his coming had been foretold in the book of Revelations.

The patient (State what the patient did in presence of the examiners and also describe his or her appearance and manner):

Talked volubly, about his inspiration, frequently went into a trance-like state in which he talked French and on returning to
219 English declared that it was not he but the spirit which had been speaking. Showed a scar of a burn in his hand made by carrying a live coal at the command of the spirit, pointed out certain lines in a picture of the Sphinx which he claims were his initials put there in prophecy of his coming, said that he saw

his name carved in the marble of the mantel. Said the spirit commanded him by its voice which he heard. Said that he was immortal and that nothing could harm him, thus excusing himself for exposure to cold, neglecting ordinary clothing, going in bare feet.

b. Other facts indicating insanity, including those communicated to me by others, as follows: (State what, if any, significant change there has been in the patient's disposition, mental condition, business or social habits, or bodily health.)

His valet who has been with him 14 years described the gradual development of this delusion of his being inspired and says it has led him to do many insane acts. He has become suspicious of friends, has secluded himself and has been neglecting his food, hence has become thin and anæmic.

4. That the facts stated and information contained in this certificate are true to the best of my knowledge and belief.

(Signed) {M. ALLEN STARR, M. D.
{EUGENE FULLER, M. D.

Severally subscribed and sworn to before me this 10th day of March, 1897.

H. A. GILDERSLEEVE, *J. S. C.*

220 *Order of Hearing.*

(Section 62.)

If a hearing before a judge or referee be granted upon the demand of a relative or near friend of the alleged insane person, or upon the motion of the judge, the following form should be used, otherwise it should be omitted:

Before the Hon. —— ——, Justice or Judge of —— Court, County, City, or Town of ——, on the — Day of ——, 190–.

In the Matter of an Application for the Commitment of —— ——, an Alleged Insane Person.

An application for an order of commitment of the above alleged insane person, based upon the petition of —— —— and upon a certificate of lunacy dated —— —, 190–, having been made and (State degree of relationship, or, if none, name of near friend —— —— having demanded a hearing upon such application, it is hereby

Ordered, That a hearing on such application for an order of commitment of the above alleged insane person be had before —— ——, at the — of —, on the — day of ——, 190–,
221 at — m., at which time testimony shall be heard touching the alleged insanity of the aforesaid person, and, if it be deemed advisable, said person may be examined either in or out of court.

The judge may (or, if a referee be appointed, the referee herein named shall) hear such testimony and make such examination and report the same at once with his decision (or opinion) as to the insanity of such alleged insane person.

And that this order be served upon —— —— the petitioner, and the following named persons: —— —— of —— —— —— of ——.

(Signature) —— ——,
Justice or Judge of the — Court of —.

Decision of judge to be used only if a hearing is had.

In the Matter of an Application for the Commitment of —— ——, an Alleged Insane Person.

A hearing having been had upon the application of —— —— for an order of commitment of the said person to an institution for the custody and tratement of the insane on the — day
222 of ——, and testimony having been taken as required by law, I do hereby decide that the said —— —— is insane and should be committed to an institution for the custody and treatment of the insane.

Dated the — day of ——, 190–.

—— ——,
Justice or Judge of the — Court of —.

Order of Commitment.

Before the Hon. Henry A. Gildersleeve, Justice or Judge of Supreme Court, County, City or Town of New York on the 10th Day of March, 1897.

In the Matter of an Application for the Commitment of JOHN ARMSTRONG CHANLER, an Alleged Insane Person.

Upon the petition of W. A. Chanler, Lewis S. Chanler and A. A. Carey, dated March 10th, 1897, and a certificate of lunacy made by two duly qualified medical examiners in lunacy, which certificate is dated on the 10th day of March, 1897, and which is annexed hereto, and upon such other facts and information as were produced before me at a hearing duly had, and being satisfied that the above alleged insane person is insane and a proper subject for custody and treatment in an institution for the insane within the meaning of the statute, it is therefore hereby
223 Ordered, That the said John A. Chanler be and hereby is adjudged insane and that he be committed to (Insert, correctly, official title of institution) Bloomingdale Insane Asylum at White Plains, N. Y. an institution for the custody and treatment of the insane.

(Signed) H. A. GILDERSLEEVE,
Justice Supreme Court,
State of New York.

Statement of Financial Condition of Insane Person.

(If the order of commitment be directed to a State hospital, the statute requires that the justice or judge shall append a statement as far as can be ascertained of the financial condition of the insane person and of the persons legally liable for h— maintenance.—See section 62.)

——— ———,
Justice or Judge of — Court of —.

224 (Cover:) Copy. State of New York, State Commission in Lunacy. Petition, Certificate of Lunacy and Orders in the Case of John Armstrong Chanler. Residence, Hotel Kensington. County, New York City. Date of Order of Commitment, March 10th, 1897. Institution, Bloomingdale, White Plains, N. Y. Date of Admission, March 13th, 1897. No. of Case Book, 4, page 314. No. for year 53. Consecutive No. 3134. Legal Status (State whether indigent, public or private). Private. Price per Week, $100.00.

Q. Is the Bloomingdale Asylum for the Insane part of any institution in this City?

A. It is the insane department of the New York Hospital.

Q. It is a large institution?

A. A large one; yes, sir.

Q. For how many years has it been in existence?

A. It has over three hundred patients and it has been in existence seventy-five years.

Q. When was he committed to the asylum?

A. On March 3rd, 1897.

225 Q. During that time have you seen him frequently, doctor?

A. Yes, sir.

Q. How frequently?

A. I have not seen him as frequently as I would like it because of the prejudice he has against us and the objection he has to our visiting him; but I have seen him and had reports of him almost from day to day.

Q. When did you last see John Armstrong Chanler?

A. Last Wednesday or Thursday, about three days ago.

Q. And when did you see him before that?

A. Several weeks.

Q. Did you see him in regard to attending before this Commission and jury, to-day?

A. Yes, sir; I knew this case was approaching and I visited him and asked him what he wanted to do in regard to it; whatever he wanted to do I wanted to carry out. I asked him if he wanted to be present here; he said he was physically unable to be present on account of pain in his spine, he described it, due to the conversation he had with people not long before; it being like a buzz saw in the upper part of the neck and scraping down his back, and he also said his knee was affected in the same way and he would be unable

to come. A little subsequently to that I received a request from him to come over again.

Q. In what place?

A. To his room. He did not wish me to represent him but I should come in his place or say that he could not come on account of his infirmity.

Q. Did that infirmity really exist or was it a delusion?

A. I think he has a pain in his spine, but I do not think it would incapacitate him from coming here. I think he felt some pain—
226 he was sincere in that but it was not an incapacity that would prevent an ordinary person from going out; he did not feel as if he could stand up; he has kept his bed for over three weeks at least.

Q. Will you be kind enough to state to the Commissioners and jurors the case of John Armstrong Chanler as you have observed it since he came under your charge, commencing from the record which you have from the time of his commitment into the insane asylum down to the present time?

A. May I refer to my notes?

Q. Yes, doctor; unless some objection is made?

A. What we know of Mr. John Armstrong Chanler is that he had been eccentric for some years; he had peculiar ideas which developed gradually. He began to feel his features were changed; that he discovered a new force in nature by which he was able to do unusual things. He could change his features at will; he could make cards appear to a mirror; he began to have suspicions of those about him and at this time he was in Virginia; there he conducted himself in such a way as to alarm the people very much and he was brought to New York.

Commissioner Ogden: Should the testimony as to his mental condition not be limited to within two years?

Mr. Candler: Yes, sir, I will come down to that presently. I think it is entirely proper to show his condition at that time unless some objection is made, and that we should lead up to that time.

Witness: He came to New York; he exhibited severe attacks—he exhibited severe peculiarities down there and was put into a
227 hotel here and he sat in a darkened room with a revolver beside him ready to repel people who were doing him harm and insulted him; he was then removed to Bloomingdale.

Q. When was that doctor?

A. March 9th, 1897. When he first came to Bloomingdale his suspicions in regard to his enemies were very vivid indeed. He would not go to sleep at night unless the attendant or his nurse was awake. They alternated to keep awake to watch for people coming into his rooms. He said he thought we were in the pay of his family who wanted to get him out of the way so they might get hold of his property. He became very suspicious of his food; he thought that it was poisoned. He would not eat anything we prepared. We were obliged to send to the village and buy bread and cheese and crackers and fruit; we had to buy fruit in cans

and vegetables; fruit which he believed we could not tamper with. After buying bread from one store for a few days he would not be satisfied, he would have bread from another store; that was to see if that store was in collusion with us—he would insist upon getting the bread from another store after buying bread at one place for a time for fear the store would be in collusion with us. He was very denunciatory to us when we came to see him; when we went into the rooms to see him—we went in to see him but it was disagreeable—it was disagreeable on account of the language he used toward us. He remained in that condition much of the time since but I do not think his suspicions are as pronounced now as they were. He also had delusions in regard to his ability and power. He told me he was the greatest prize fighter and the greatest lawyer, and he retained his delusion in regard to his great ability ever since.

He has the same delusions now, although now he has turned
228 that off in the literary direction. He is now the greatest poet; he has the same delusion still that people wanted to get him out of the way. When the Spanish war came up he thought his case was about to be brought up, but when the Spanish war came up that kept the public attention from it—it detracted public attention from his case, but after the Spanish war was over his case would come up and it would be a greater case than the Spanish war; the people would rise up——

Q. What did he do in regard to preparing his case?

A. Since he was with us he kept copious notes; manuscripts two or three inches in thickness; that manuscript shows up the conspiracy as he said, and when he went to our entertainment he would put his foot upon them and guard it; he would guard it carefully, but he claimed it contained the whole case.

Q. How about the newspapers?

A. He has got every newspaper he has received since he came to the Bloomingdale Asylum, in his room; of those he made notes with a pencil. How far he thinks they apply to himself I am unable to say, but he has kept them, the history of his case and the manuscript too. He said after the Spanish war ended the Southern people would rise up to take charge of this matter. He had a habit of standing and throwing his profile against the wall at night and not realizing it and moving his head a little so his nose would come on the side of the head—so his nose would come on the side and he thought he did that by his will power rather than anything else, the change of his nose to the light.

Q. What is the nature of his disease?

A. It is sometimes called systematized delusional insanity;
229 a short name for it is paranoia; it is in the nature of a progressive disease in which a man first has feelings of discomfort; after a time the feelings are due to diseased people and influences and later on he gets indignant and makes it known by violence, later on he concludes he is a person of unusual importance on account of so many people concerning themselves about him and he gets extravagant ideas; and sometimes he takes on an idea as Mr. Chanler lately has—if he is not Napoleon Bonaparte, he is

similar, like Napoleon, and that he will have a career like him and so on.

Q. Is the disease progressive?

A. The disease is a permanent disease and progressive in the stages I have mentioned and finally——

Q. His disease is developing that way—is the disease from which he is suffering developing that way?

A. He has gone through these stages; at the present time he has extravagant ideas about his capacity, so far as it has progressed.

Q. In your opinion, doctor, is it curable or incurable?

A. Incurable.

Q. In your judgment is Mr. Chanler competent to take care of himself or his affairs?

A. He is not.

Mr. Candler: Does any member of the jury desire to ask the witness any questions?

By Commissioner Ogden:

Q. These symptoms you have described commenced at the time your observation commenced at the time he came into the asylum?

A. My observation commenced then. We obtained a his-
230 tory of the case in order to get our record complete. The first part was not of my personal knowledge, but from the history obtained.

Q. He came to the asylum a little over two years ago?

A. Yes sir.

Q. And the symptoms you have described as existing when he came in continued to this day?

A. They have continued as the disease has progressed; some have abated and some have increased some.

Q. But he is under the same delusions——

A. He is under the same delusion. He has various other delusions which I have not enumerated, but they are of the same general character which I have described.

Q. The description you have given applies to the whole period within the first two years?

A. Yes, sir; there was never a time when this condition of mind has been absent; there never was a time when he was lucid as I understand lucid intervals.

By Commissioner Fitch:

Q. What disease is he suffering from?

A. Paranoia; by some it is called systematized delusional insanity.

Q. About what is his age?

A. He is thirty-six years old now.

Q. Would that compare correctly with the development in the case—would it be developed in a case of paranoia—would it be about the age?

A. Yes, sir.

Q. I notice in the certificate that he only took certain articles of

food about two years ago, restricting himself to diet; does he still do that?

A. He still continues a vegetable diet; I am not aware
231 that he has eaten any meat since he was with us. He told me that his mental power was due to his diet, to an extent.

Q. The certificate also says he was dominated by a spirit; is that delusion permanent in his case now?

A. I could not say in regard to that; he is cautious about developing those delusions to us; he is on his guard.

Q. He still thinks he resembles Napoleon?

A. Yes, sir; I think he does.

Q. You think the disease will terminate soon in death?

A. No, sir; there is no liklihood of that.

By a Juror:

Q. Has he ever made any attempt to escape?

A. No, he has no desire to escape—he has made no attempt to escape. I granted him the privilege of all the grounds—I gave him the parole of our grounds on his honor—he is a very honorable man, he went out by himself an hour or so—and then he ceased to go out because he was physically unable on account of his unlikelihood——

By a Juror:

Q. Did he show any homicidal mania?

A. He threatened to kill us—to kill me; he never made any attempt upon me; but that was in the early part of his stay. Since, I don't know whether I mentioned it, but he thinks there is a conspiracy of the "Wall Street clique." He mentioned Choate, and John Pierpont Morgan and Mr. McKinley, and since he has convinced himself that the people are of considerable importance he thinks we are under strappers, and he is very amiable now.

232 By Commissioner Fitch:

Q. You think he would be hurt or injured in any way by producing him here?

A. No, I don't think he would.

Q. You think it is a delusion; on the contrary he would not be in any way injured if he were brought here?

A. He is a hypochondriac—a hypochondriac delusion; he gives very exaggerated meaning to his aches and pains which may not be serious at all. He thinks he cannot go out or get up on account of his pain, while we would probably go around and do our work with the same indisposition and it would not interfere with our attending to business.

Q. The only reason for not producing him is his own wish?

A. That was his decided wish. I gave him the opportunity, and to employ counsel or anything he wanted to do.

By Mr. Candler:

Q. Is he living in luxury and comfort?

A. He has a suite of rooms—two rooms and a bath room; the exclusive attention of a nurse and every luxury he wants in the way of food and everything else.

Mr. Candler (to the jury): Have you gentlemen any questions to ask?

The jury states that there are no further questions.

Witness: He was more confidential with the two other gentlemen that examined him than with me.

233 CARLOS F. MACDONALD, being called as a witness, for the petitioners, was duly sworn, and testified as follows:

By Mr. Candler:

Q. Give us your full name, doctor?
A. Carlos F. MacDonald.
Q. You are a physician?
A. Yes, sir.
Q. And have been since when?
A. Since 1869.
Q. Doctor, have you graduated from any college or institution?
A. From the Bellevue Medical College, in this city.
Q. Officially connected with any hospital?
A. I have been officially and professionally connected with hospitals and asylums—hospitals for the insane and asylums since 1870, in the capacity of assistant physician and medical superintendent, and for seven or eight years President of the State Commission in Lunacy, in this State, an official body having jurisdiction over all the institutions for the insane, involving visitation and examination in a great many cases of insanity.
Q. During that time you examined many cases of mental disease?
A. Yes, sir; many thousands. It was my duty as a medical member of the commission to see all cases in the asylums and hospitals and to examine all recent cases and examine their mental condition; that meant examination of several thousand cases a year.
Q. That included Bellevue Hospital Medical College in this City?
A. There are no cases in the medical college, but it included the patients of the city asylum for the insane in this State from Kings County and all over the State and private asylums as well.

Q. You have given your attention to this branch of medi-
234 cal science all these years?

A. Since 1870, continuously.

Q. Have you served on special commissions appointed by the Governor of the State?
A. Yes, sir; frequently.
Q. For what purpose?
A. For the purpose of determining the mental condition of persons under sentence of death. I think I served on every commission under Governor Cleveland, Governors Morton, Hill and Flower with one or two exceptions.
Q. You consider yourself an expert in this line?

A. So far as I made a special study of the disease; I made a specialty of it.

Q. Are you acquainted with John Armstrong Chanler, the respondent here?

A. Yes, sir.

Q. Have you visited him in the Bloomingdale Asylum for the Insane?

A. Yes, sir.

Q. Tell us when you first visited him and with whom that was and what took place on that occasion?

A. I shall have to refer to my notes as to dates and some of the facts. I first visited John Armstrong Chanler at the Bloomingdale Asylum for the Insane on March 16th, 1898, in company with Dr. Austin Flint, of this city. We went up there to the institution and jointly made a personal examination of Mr. John Armstrong Chanler. It was a joint examination—we were together there and made an examination as to his mental condition. We informed Mr. Chanler who we were and the purpose of our visit; that we were there to examine him as to his mental condition. He received us cordially and immediately began, as he said, to explain his case.

He said he was the victim of a gigantic conspiracy on the
235 part of his relatives, who were jealous of his great mental and physical superiority to theirs, the other conspirators being Joseph H. Choate, Elbridge T. Gerry, Cornelius Bliss, Judge Beekman and several others whom he named; that they had subsidized the State and National Government, which were arrayed against him; that his case was thoroughly prepared——

Q. He named Mr. Choate and Mr. Gerry and others?

A. He named, I think, the most of them were members of the Board of Governors of the New York City Hospital, as that is a branch—of which Bloomingdale is a branch.

Q. That is the reason they were selected?

A. Yes, sir. That they had subsidized the State and National Government, which were arrayed against him; that his case was thoroughly prepared and would be taken up by the Court just as soon as the Spanish-American war scare was over; that he would expose President McKinley's "bogus prestige" and in this he would be "backed up by six million, five hundred thousand silverties." He then called our attention to a large stock of daily newspapers—files of the New York and Virginia newspapers and other papers which were piled up on the floor in one corner of his bedroom,—a large amount of daily papers which he had saved.

Q. What did he say about it?

A. He said those contain my case. He said he had edited these papers from day to day as published, "blue-penciling all the lies," and that he would show them all up in due time. These papers were blue penciled all over—had blue pencil marks all over them. He would show them all up in due time, he said. He also said that

he was an expert in the art of boxing, in pool playing and
236 in pistol shooting, that he could hit, with a pistol, two out of three apples thrown in the air every time. Also, that he

was an expert in mental strain and in mental impression, depression and exaltation, that was his exact language. That he excelled in mental and physical power and that he was "a mental gladiator, the John L. Sullivan in debate;" that in mental contests or debate he not only had never failed to hold his own, but had invariably "knocked out" his opponent. This great mental power and physical power he said was due to his peculiar diet of bread and potatoes with some other vegetables and fruits; that he ate no meat for the reason that persons who eat meat "could only think with their guts," as he expressed it. That he was the best hated man in the community, because he made people think, "not the poor, not the working people," who were all in sympathy with him, but the "white scum of society," the "Riff-raff of society," who hated to think. That he compelled them to think and hence their hatred of him; that he was an expert in "anti-hypnotic subjective subconsciousness;" that he could go into a trance and state—that he could go into a trance state and while in that state his hand would write out predictions of coming events; that on one occasion, while in a trance, his hand wrote out a direction to purchase Manhattan Railroad stock, that he followed the direction and held the stock, which advanced and when the hand told him to sell he did so and made a handsome profit; that on another occasion when in a trance or subconscious state his hand wrote that his eyes would change color at a certain time and that the change would
237 occur within a period of three hours; that his eyes did so change and they are now different in color from what they formerly were; also that the conformation of his nose would gradually change until he would resemble Napoleon Bonaparte. He called our attention to this change which he said was gradually taking place. He was becoming gradually like Napoleon Bonaparte. He had premonitions of coming events; that he could always accurately predict in the morning whether he had a good or bad day. All of the foregoing and a great deal more of similar character which we were unable to follow, was said in a manner which indicated a marked state of morbid mental excitement. He talked so rapidly we were unable to follow him; he was exceedingly voluble—demonstrative, effusive and vociferous and at times vulgar and profane, and talked in an excited way. His manner exhibited a marked state of morbid mental excitement. He smoked cigarettes incessantly during the entire visit. At the end of the conversation, which he terminated very abruptly, he said, "No more to-day." He appeared to be greatly exhausted as a result of a great mental excitement and strain he had been under for a period of two hours. He talked incessantly for two hours and when he said, "No more to-day" he was ready to drop down exhausted. He appeared to be greatly excited. He dismissed us politely after exacting from us a promise to return in the near future and "finish the conversation."

Q. All that took place that afternoon?

A. Yes, sir.

Q. Who was with you at that time?

A. Doctor Austin Flint. He monopolized the conversa-
238 tion all the time so that we did not have an opportunity to make an examination of his physical condition until he dismissed us—we did not have an opportunity until he dismissed us to make a physical examination of him or make such investigation of his physical condition as would enable us to say that the examination was a complete one.

Q. Did you see him again?

A. Yes, sir; we went back in pursuance of that promise.

Q. Who was with you at that time when you went there the second time?

A. Doctor Flint and myself. In pursuance of the promise made to him we again visited Mr. Chanler on April 9th, 1898. He cordially invited us to walk into his room at once; our names were announced; the only garments he had on were a shirt and an under shirt. It was about two o'clock in the afternoon. Mr. Chanler apologized for his appearance saying that he had just breakfasted He walked about the room in this nude state for a few minutes and would occasionally hop and jump as if to display his agility. He expressed pleasure at seeing us again; and after providing us with seats and bringing cushions for us to sit on he put on a pair of trousers and excusing himself proceeded to the water closet adjoining the room in which we were saying that he was going to evacuate his bowels. Before leaving the room he handed each of us a morning paper "to read during his absence," then going to his bed took from under the mattress a large volume of manuscript which he carried with him—a volume twice as large as this (indicating to a book on the desk of the Commissioners). This he carried with him to the water closet. Subsequently he called our attention to the manuscript which was carefully tied with twine and
239 which he said he constantly kept in his possession night and day. He said that it contained a full statement of his case; that no one but himself knew its contents and that he intended to read it on the witness stand when his case came up in Court. On returning from the water closet he lighted a fresh cigarette and at once began to talk in the same excited, effusive and vociferous manner he displayed on the occasion of our former visit, sometimes shouting at the top of his voice. Sometimes he fairly rioted and talked in that rapid way. He was exceedingly exalted in manner and appearance and conversation and he reiterated the same delusional ideas as on the former visit. He said, among other things, that his system had gradually undergone a change until he had become a magnet, he had gradually undergone a change since we were there—he had become a magnet and his stomach a Leyden jar. As proof of this he showed us a little silver box which was much tarnished, which he said he carried in his pocket for more than two years without its having undergone the slightest change; he carried it, he said, for more than two years without ever tarnishing, but recently since he became a magnet it had become oxidized "as you now see it." This change in color, he said, could not occur if

the box were carried by any one else. It was the magnetic effect. We made a physical examination of Mr. Chanler and the pulse was 110; his hands cold and tremulous, pupils normal, tongue coated and tremulous. There was also a marked tremor of the labial muscles and of the eyelids when the eyes were closed; the pupils remained equal in size and reacted to sight. The knee re-
240 flexes were much diminished. There was no sign of the want of muscular power to direct his movements, and no suggestion of paralysis about him. He stated that he slept well and that his bowels were regular and that he was in perfect mental and physical health.

I might say, also, that before we visited him we read his history as it appeared in the hospital case book, including a verbatim statement made by his valet in regard to his condition as it was and the symptoms which he evinced prior to his coming to the hospital.

From the information obtained and the facts observed I reached the conclusion, and Dr. Flint concurred in that—from the information in the case book and from the visits and examinations—from the facts we observed ourselves on our examination we were clearly of the opinion that he was insane and a proper subject for detention and treatment as such in an institution for the insane; and also, that the form of his insanity from which he is suffering is paranoia or chronic delusional insanity, the English term of it. It is an incurable form of mental disease: It is characterized by morbidly exalted ideas of self-importance and grandeur, together with delusions of conspiracy and persecution, all of which he exhibited; and it is also characterized in the mania known in the later stage by the change in the personality of the individual; the transformation of the personality which he evinces clearly by the declarations that he was gradually changing to represent Napoleon Bonaparte and the change in the color of his eyes and physiognomy. This change in personality usually occurs in the third stage of
241 the disease and is ascribed by the patient suffering from paronoia to the influence of some unseen agency. I should say that Mr. Chanler is the most typical classical case of paranoia I have ever seen. I have seen thousands of them. It presents all the essential and diagnostic signs of that disease—delusion, grandeur, exaltation, conspiracy and change of personality.

Q. Did you have a later interview with him, and if so, when?

A. I examined him again in company with Dr. Flint, at Bloomingdale, on April 20th, 1899, this year. This examination lasted from about 6:30 to 8 o'clock P. M. On this occasion he was in bed and he was in what seemed to be his usual physical condition. He did not at first complain of any physical ailment, but in reply to questions he said that on April 14th, 1899, he was suddenly seized with a remarkable sensation in the spine just above the sacrum. There was no pain but the sensation was like the revolution of a buzz-saw. He got up and moved freely about the room. A careful examination of the spine revealed nothing. He was wearing a porous plaster which he said gave him instant relief when he ap-

plied it. He said his nervous system was run down under his "incarceration" and that the trouble in the spinal cord started in his head. He said nothing about his spinal trouble except in answer to questions. We formed the opinion he had no disease of the spine and the difficulty complained of is a delusion, probably temporary. He received us on this occasion very cordially again and was voluble, excited and vehement in his language, the same as on the examination of March, 1898. He talked most freely and seemed to conceal nothing from us. His abnormal mental
242 condition is markedly intensified since the first examination.

He talked freely and concealed nothing from us in regard to himself. His abnormal mental condition was intensified since our first examination; he fully believes, as he expressed it, that he is the reincarnation of Napoleon Bonaparte. He recited to us seven or eight sonnets of his own composition, saying that he had suddenly become the greatest poet in the world's history except only Shakespeare. "Except Shakespeare," he repeated that several times. These sonnets were certainly of a most extraordinary nature and very brilliant in a way. At our suggestion he went into a trance. He said he would become a reincarnation of Napoleon. He went into a trance and gave us a representation of the death-bed scene of Napoleon looking into a hand-mirror and lying on his back. He has the history of Napoleon there which he has blue-penciled all through the points which he applies to his own case as resembling himself and has arranged his bed to resemble the bed on which Napoleon Bonaparte was said to have died and an illustration in the history which he has, he said his bed was similarly. He said that was a mere coincidence, he did not do it intentionally. He did that to show he was in every way a reincarnation of Napoleon. That is the substance of our second examination, although it is only a small part of it, for the reason, he went over so much ground it was impossible to follow him and get it down.

Q. In your opinion, doctor, is he now of unsound mind?

A. Yes, sir.

Q. Is he capable of attending to his person or estate—his affairs?

A. Absolutely not.

243 By Commissioner Ogden:

Q. This opinion is formed on your observation?

A. Yes, sir.

Q. And it is independent of what was told you?

A. Yes, sir. It is confirmed; of course, there is no shadow of doubt in my mind, and I think in the experience—any experienced examiner in lunacy would reach that conclusion without any history of the case, whatsoever.

By Commissioner Fitch:

Q. Paranoia is not preceded by so-called mental storm, is it?

A. No, sir; it is a form of disease which comes on gradually by the process of evolution—gradually evoluted into paranoia; change in the methods of thinking and feeling and acting.

Q. You have no history of a mental storm in his case?
A. No, sir; no acute attack of mania or melancholia, which occur in other forms of insanity.
Q. That fact in connection with the immense amount of delusions which he displayed with them induced you in forming your diagnosis?
A. Yes, sir; and it presents all the ear-marks of typical paranoia. In the physical and mental condition there is no symptom lacking to make it a perfectly typical case of paranoia. If one wanted a case for teaching or describing a case in a text book you could not describe it more graphically than simply taking his case as it presents itself. It is the most striking case of paranoia that I have ever seen in my life.

244 Dr. AUSTIN FLINT, being called as a witness for the petitioners, was duly sworn, and testified as follows:

By Mr. Candler:

Q. Your name, doctor?
A. Austin Flint.
Q. Where do you reside?
A. No. 60 East 34th Street.
Q. Are you a physician?
A. Yes, sir; since 1857.
Q. Where have you been practicing your profession and in what capacity?
A. I began in Buffalo, in 1857; I was connected with the Buffalo General Hospital; then visiting surgeon; in 1859, I was in New Orleans—in the New Orleans school of medicine; in 1860, and '61, and part of 1859 and '60; I was then in New York, and have been in New York ever since.
Q. In what capacity have you practiced your profession?
A. I have been teacher of physiology and am now consulting practitioner of medicine. I have paid special attention for the last ten or twelve years, to mental diseases.
Q. Have you had large experience in the treatment and observation of mental diseases?
A. Considerable experience.
Q. Are you acquainted with John Armstrong Chanler?
A. I made two examinations of Mr. Chanler in connection with Dr. MacDonald, and, on one occasion when I was at Bloomingdale, making an examination of another person, I made a friendly visit upon Mr. Chanler.
Q. Is your recollection of your examination such as stated by Dr. Carlos F. MacDonald?
A. It is. It is correct and his notes were made jointly—
245 the notes were made by us jointly; they do not include everything——
Q. Will you tell us about the examination you made in the absence of Dr. MacDonald, and when and where it was?
A. I examined Mr. Chanler March 16th, with Dr. MacDonald,

and I have listened carefully to his testimony and that is the testimony that I should give if I were to detail to the jury the examination we made and the result arrived at—perhaps adding my recollection to his. On April 9th, I made the examination with Dr. MacDonald with substantially the same result as he has testified. On August 23rd, 1898, I visited Mr. Chanler, and his condition then was somewhat intensified; that is his delusion had become more fixed and he evidently at that time believed that he was Napoleon Bonaparte. On the third occasion when I examined with Dr. MacDonald I think his belief that he was actually Napoleon and that Napoleon had never died or was living in him was decided and fixed, and he had the delusion of the change of personality which is observed in many cases of paranoia.

Q. And from what form of insanity is he now suffering?

A. He is a typical case of what is known as paranoia or chronic delusional insanity.

Q. In your opinion, doctor, is that progressive and incurable?

A. It is incurable and progressive and will finally terminate in dementia. If I may be allowed to say those cases frequently live for a very much longer time, quite different from parresis.

Q. In your judgment is Mr. Chanler now cap-ble of taking care of his estate and person?

A. No, sir; he is not.

246 By Commissioner Ogden:

Q. That is the usual thing, doctor, that a patient suffering from paranoia—it is first by degrees gets a slight form and then a mature delusion?

A. That is the usual thing. I believe that paranoia is due to a congenital defect, that it is a so-called eccentricity and is accompanied often with good mental equipment—with intellectual brilliancy and it gradually fills the mind of appreciation—he gets exalted ideas of his own superiority; he thinks he is persecuted and he has some fixed delusion like this delusion that he is Napoleon Bonaparte.

Q. Is his physical condition all outlined with that form?

A. Nothing could be more typical of that form of disease; it is an absolutely typical case from every point of view.

CHARLES W. WESTON, being called as a witness in behalf of the petitioners, was duly sworn and testified as follows:

By Mr. Candler:

Q. What is your full name?

A. Charles W. Weston.

Q. Are you acquainted with John Armstrong Chanler?

A. Yes, sir.

Q. How long have you known him?

A. Since 1892 or 1893.

Q. Have you had certain business transactions with him?

A. Yes, sir.

Q. Do you know anything in regard to his property?
A. Something, yes.
Q. Will you be kind enough to state to the jury—first state how did you come to know about his property?
47 A. I have been connected in various business ventures with Mr. Chanler for the past five or six years.
Q. You know some of the property which he possesses?
A. Yes, sir.
Q. Will you be kind enough to state it to the Commissioners and o the jury. Do you know to your own knowledge of certain roperty which he now owns?
A. Yes, sir. Mr. Chanler has seven hundred and thirty-seven hares of stock in the Self Threading Sewing Machine Company.
Q. What did that cost?
A. It cost him sixty-five thousand nine hundred and seventy-ive dollars.
Q. What is it worth now?
A. That I am unable to say.
Q. Can you approximate its value?
A. I can simply say that this money Mr. Chanler has advanced—he has advanced certain sums of money to the Self Threading Sewing Machine Company to develop a very valuable invention, this *have* never been fully developed and is not yet fully developed.
Q. It has no present market value?
A. It has no present market value.
Q. What else does he own, to your knowledge?
A. He owns eight hundred and fifty-six shares of preferred stock of the United Industrial Company and two hundred and thirty shares of stock—of common stock of the United Industrial Company. Also three thousand five hundred and forty shares of the Roanoke Rapids Power Company.
Q. At par value they are worth how much?
A. Par value one hundred dollars per share.
Q. What did they cost him?
A. It cost him about one hundred and eight thousand dollars.
Q. Has it any present market value?
248 A. No, sir.
Q. What else does he own?
A. He has also five shares of stock of the Trans-Atlantic Publishing Company, par value one hundred dollars.
Q. Has that any market value?
A. No market value to my knowledge.
Q. What else?
A. On the books of the Roanoke Rapids Power Company, of Roanoke Rapids, North Carolina, Mr. Chanler has a credit of two thousand three hundred dollars.
Q. Is that valuable now?
A. It has been advanced to the company by Mr. Chanler to make certain improvements in the real estate, and is to be repaid by that company in land.
Q. Has he any mortgage in the United Industrial Company?

A. Mortgage on the United Industrial Company's mills and lands, at Roanoke Rapids, amounting to thirty-five thousand one hundred and twelve dollars and sixty-four cents; with interest to date, one thousand five hundred and sixty-two dollars and fifty-one cents; total thirty six thousand six hundred and seventy-five dollars and fifteen cents.

Q. Is that valuable—is that marketable or valuable now?

A. It stands as a lien on the United Industrial Company property.

Q. If it develops successfuly that would be valuable?

A. Yes, sir.

Q. What next?

A. Also notes of the United Industrial Company, secured by mortgage made to Prescott Hall Butler, as Trustee, for eight thousand dollars, with interest to date, amounting to three hundred and ninety-four dollars and sixty-seven cents, making a total of
249 eight thousand three hundred and ninety-four dollars and sixty-seven cents. Also book credits on the books of the United Industrial Company, which are not secured, amounting with interest to date, to one thousand and forty-seven dollars and ninety-one cents.

Q. What about the Self Threading Sewing Machine Company?

A. The Self Threading Sewing Machine Company—he has book credits in his favor—there are book credits in favor of Mr. Chanler for amounts—for loans not secured, amounting to twenty-six thousand four hundred and forty-one dollars and twenty-four cents.

Q. What else?

A. Also, an assignment of an insurance policy on the life of D. D. Miller, securing a loan of five hundred and forty-six dollars and fifty cents. Also certain paintings now in the Manhattan Storage Warehouse Company—at the Lincoln Safe Deposit Company, both of this City, which are insured for five thousand dollars.

Q. What is your best judgment as to their value?

A. They must be worth about that.

Q. What do you say about the mills?

A. Mr. Chanler paid about six thousand five hundred dollars for certain property known as the Merry Mills farm, Cobham, Virginia. He also bought a stock farm known as the Hawkwood stock farm for twenty-five thousand dollars. There is a mortgage of twelve thousand dollars on this property, and I am informed that if the property came to a sale it would probably not realize the amount of the mortgage.

Q. Where is this farm?

A. I don't know where the farm is.

Q. Is there any money in the United States Trust Com-
250 pany?

A. There is a fund in the United States Trust Company, in the name of Mr. John Armstrong Chanler, which is not in cash; it is certain securities which are held by the United States Trust Company, called, "The Paris Prize Fund," twenty-five thousand dollars—second mortgage five per cent. bonds.

Q. You understand that belongs to him or only stands in his name?

A. Yes, it stands in his name.

Q. It is a fund for the prize for students to Paris——

A. Sending art students to Paris, to have them educated. In addition to the Beach Creek railroad five per cent., three hundred and twenty-seven shares of Morris and Essex Railroad, at the last quotation, it is for stock which amounts to thirty thousand two hundred and forty-seven dollars and fifty cents.

Q. Is that part of the Paris Prize Fund?

A. Yes, sir. Making a total amount standing today in the United States Trust Company, in Mr. Chanler's name, fifty-five thousand two hundred and forty-seven dollars and fifty cents.

Q. You understand that is not his property?

A. I am not sure about that.

Q. What do you know about the Betty A. Badger farm, at Roanoke—the Badger farm.

A. He paid three thousand dollars for that; I think it is worth about that sum.

Q. It is at Roanoke Rapids, North Carolina?

A. Yes, sir.

Q. That is all of his property that you know of?

A. That is all I know about Mr. Chanler's affairs.

251 By a Juror:

Q. This two hundred and thirty shares of common stock of the United Industrial Company—will you explain what the nature of their business is?

A. The United Industrial Company was formed to establish industrial plants and factories in different parts of the country wherever most advantageous.

Q. Were there any sales?

A. No sales for the past years.

Q. Nothing transferred at all?

A. Not that I know of.

Q. Do you know of any stock being sold in the Self Threading Sewing Machine Company?

A. No, sir, none of that has been sold.

Q. Is that a company?

A. Yes, sir; it is a company.

Q. You don't know of any stock being sold at all?

A. No, sir.

By a Juror:

Q. Can you tell me whether he acquired either one of those parcels of stocks in the Industrial Company or the Self Threading Sewing Machine Company—what date?

A. I haven't the dates. He acquired stocks from both of those companies at different times; he became interested in the United Industrial Company in the year '93, I think.

By another Juror:

Q. Do you know whether any of those investments were made within two years?
A. No, sir; not within two years.

A. Juror: It could not have been within two years; he was
252 in the asylum in March, 1897.

By a Juror:

Q. Was he an officer in any of those companies?
A. He was at one time an officer in our company—he was at one time an officer in all the companies.
Q. Were you connected with the company?
A. Yes, sir, I am an officer in all three companies. I am Secretary of the Self Threading Sewing Machine Company and Secretary of the Roanoke Rapids Power Company, and Treasurer of the United Industrial Company.

By a Juror:

Q. Incorporated under the laws of this State?
A. The Self Threading Sewing Machine Company and the United Industrial Company are incorporated under the laws of the State of New York; the Roanoke Rapids Power Company is incorporated under the laws of the State of North Carolina. The property is now undergoing development; it is very hard to state the actual value of the securities.
Q. In your opinion has the property any value—has it a prospective value?
A. There is considerable value in it.

By another Juror:

Q. Do you know who induced Mr. Chanler to invest this money in those companies?
A. I do not.

253 WINTHROP CHANLER, one of the petitioners, sworn in his own behalf, and testified as follows:

By Mr. Candler:

Q. What is your full name?
A. Winthrop Chanler.
Q. Are you a brother of John Armstrong Chanler?
A. I am.
Q. You are one of the petitioners?
A. Yes, sir.
Q. Is John Armstrong Chanler, your brother, now married?
A. No.
Q. Has he been married?
A. He has been married; yes, sir.
Q. And a divorce obtained?
A. Yes, sir, so I understand.

Q. His wife has been remarried since the divorce?
A. Yes, sir.
Q. Has he any children?
A. No.
Q. Who are his heirs-at-law and next of kin?
A. His brothers and sisters.
Q. Lewis S. Chanler is one brother—the name of one brother?
A. Yes.
Q. And William A. Chanler, one?
A. Yes.
Q. Robert B. Chanler one?
A. Yes, sir.
Q. Those are his brothers?
A. Yes, sir, and myself.
Q. And his sisters, name them?
A. Margaret L. Chanler, Elizabeth B. Chapman, wife of John J. Chapman, Alida B. Emmet, wife of C. Temple Emmet.
Q. Those are all of full age? And are all his sisters?
A. Yes, sir.
Q. They are all of full age?
A. Yes.
Q. Those are his heirs and next of kin?
A. Yes, sir.
Q. They are all of age?
A. Yes.

254 Q. What property has John Armstrong Chanler conveyed since he was in the Bloomingdale Asylum?

A. He conveyed the property in New York, on West 15th Street, bounded by Tenth Avenue, on the east, and 11th Avenue or the Hudson River on the west and by 14th Street on the south and 15th Street on the north, conveyed for eighty-five thousand seven hundred and fourteen dollars; he had a one-eighth interest in it.
Q. That was conveyed by two deeds?
A. Yes, sir.
Q. Are those the deeds (deeds shown witness)?
A. Yes, sir.
Q. The aggregate was one hundred thousand dollars?
A. Yes, sir.

Counsel for petitioners offers the deeds in evidence.

They are admitted in evidence and marked, respectively, "Petitioners' Exhibit No. 3, and Petitioners' Exhibit No. 4, June 12th, 1899."

Q. What other conveyances did he make?
A. None, to my knowledge.
Q. And that is shown by those two deeds?
A. It is shown by those two deeds.
Q. Will you be kind enough to state what real property Mr. John Armstrong Chanler now owns, and what you know in regard to its value?
A. He has real estate in this City at 298 Broadway, a new building has lately been put there.

Q. What is the value of it?

A. The building is worth about two hundred and eighty thousand dollars, I am given to understand.

Q. Is there any mortgage on it?

A. There is due for mortgage, interest and taxes and so
255 forth about ninety-two thousand dollars and fees for the contractor eighty-nine thousand, leaving an equity of about one hundred thousand dollars.

Q. What about the buildings on Third Avenue?

A. He has three buildings, No. 246 Third Avenue, No. 362 Third Avenue and No. 360 Third Avenue and a house at No. 252 East Houston Street, aggregating about thirty thousand dollars.

Q. What next?

A. He owns a piece of property in Red Hook, known as the St. Margaret's Home; it is valued at ten thousand dollars.

Q. What next?

A. A farm, Ore Lot, near Barrytown, New York; the equity is about thirty-five thousand dollars—it is worth abo t that now.

Q. What next? Do you know anything of his o er property, about the Virginia property?

A. I know very little about that. I know that he had it but I have never seen it. He has under the trust estate of his father a certain amount of property, held in trust——

Q. It is property held in trust?

A. Yes, sir, bond and mortgage.

Q. What is the annual income?

A. Five thousand dollars a year.

Q. Under his father's will he receives about five thousand dollars, annually?

A. Yes, sir; about that.

Q. And these other articles are they personal property, which was testified to by the previous witness?

A. Yes, sir.

By a Juror:

Q. Do you know anything about that?

A. Yes, I know a good deal about it.

256 By Mr. Candler:

Q. What do you know about the seven hundred and thirty-seven shares of the Self Threading Sewing Machine Company, par value of one hundred dollars?

A. I know nothing about them, except from hearsay in his office; whether that is the correct amount or not I don't know.

Q. Have you heard of the other property which the previous witness testified to?

A. Yes, sir.

Q. And that conforms with your knowledge of it?

A. Yes, sir.

By a Juror:

Q. Do you know whether he derived any income from any of this property that Mr. Weston has testified to?

A. No, I don't think so.

Q. Who has charge of his affairs?

A. Mr. Philips, his partner, has charge of it and Mr. Stanford White.

By Mr. Candler:

Q. He was an intimate friend of his?

A. Yes, sir.

Q. He is connected with a firm of architects?

A. Yes, sir.

Q. A man whom he relied upon?

A. Yes, sir.

Q. And he approved of these proceedings?

A. Yes, sir.

Q. Why is he not here as a witness today?

A. Because he was his friend, and the only person in whom he has absolute confidence; he did not want to appear in these proceedings; it is a matter of delicacy with him.

Q. And he is out of town at present?

A. Yes, sir.

257 Mr. Candler: That is our case.

Mr. Candler: There is a desire that the respondent be produced here before the jury; I think it is entirely proper and I shall take an adjournment to any day that will be agreeable to the Commissioners and the jury.

The jury states that they do not desire to have the respondent produced in Court.

Mr. Candler: I want to comply with the wishes of the Commissioners and jurors.

A Juror: The jury does not care to have Mr. Chanler produced before them and for that reason there is no necessity for an adjournment, we can render our verdict now.

Mr. Candler: The order of the Court reads that if the jury or any of the Commissioners desire to have the respondent produced in Court and have him put on the stand they may do so.

The Foreman: It will be very hard to bring this jury here again and it is not their desire to have an adjournment of this inquest; they think the case can be submitted upon the testimony which has been given. They do not wish to have the respondent placed upon the stand.

Commissioner Ogden: The respondent can be produced in Court without any injury or harm being done to himself—I understand the doctors have testified that he is physically able to attend Court?

Mr. Candler: I shall produce him here if it is the wish of
258 the Commissioners and if we take an adjournment to some other day.

Commissioner Fitch: I will ask to have Dr. Lyon recalled,

Dr. SAMUEL B. LYONS, having been previously sworn is recalled by Dr. Fitch.

By Mr. Candler:

Q. Doctor, will you be kind enough to state whether in your judgment, in view of the desire of Mr. John Armstrong Chanler not to come before this commission and jury that it will do him an injury to bring him down here against his will?

A. I think it would be—I think he would be very much incensed and get excited; I think it would be an injury to him. When I said he was physically able to come down I meant if he wanted to come, but not forcibly—not to bring him down forcibly.

Q. You think it would exhaust him to bring him down here before these Commissioners and jurors?

A. Yes, sir.

By Commissioner Fitch:

Q. You think it would be an injury to him to bring him down here? On your former testimony you said it would be no injury?

A. It would be no injury——

Q. Now, you are willing to say it would do him harm and injury if he were brought down here before this commission and the jury?

A. I do not want my testimony to be contradictory. I think his illness is hypochondriacal and he has the physical strength to
259 come down, but I think that he would be excited and disturbed by it and it would make him uncomfortable.

Q. You do not think it would do him harm physically but mentally?

A. Yes, sir.

Q. And do him an injury?

A. Yes, sir.

Q. Not permanently, but temporary?

A. Yes, sir. He is a man that don't bear opposition; he becomes excited—he does not brook opposition——

By a Juror:

Q. Would you have to use force to bring him here?

A. It would just depend; it would depend upon how he took it; he said he did not want to come down.

Dr. CARLOS F. MACDONALD, having been previously sworn, is recalled by Dr. Fitch:

By Mr. Candler:

Q. Will you be kind enough, doctor, to state your views in regard to the effect upon Mr. John Armstrong Chanler, to bring him down here in view of the statement which he made to Dr. Lyons in reference to his preference not to come?

A. I think it would excite him very much; in that way it would tend to aggravate his mental condition. He is physically able to come down here, but it would unduly excite him—it would un-

doubtedly excite him very much and exhaust him as it did when we examined him. He was completely exhausted at the examination—after we examined him.

Q. You think it would be unwise to bring him down here—you think he ought to be brought here?

A. I should judge not unless there is a question for the
260 jury; if they have any question about his mental condition, or if the Commissioners have a desire to have him produced here, then of course he might be brought here——

By Mr. Fitch:

Q. You think under the circumstances it would be unnecessary unless the jury and the Commissioners desired to have him produced?

A. Yes, sir.

Commissioner Fitch: I think you have covered the ground. We wanted to have some reason why he has not appeared at this inquest and if you say it would be an injury to him and unduly excite him to bring him unless the commission found it necessary that is sufficient.

Witness: In my judgment it would aggravate his mental condition and in that way injure him and would subject him to great excitement—get him unduly excited.

Dr. AUSTIN FLINT, having been previously sworn, is recalled.

By Mr. Candler:

Q. Dr. Flint, what have you to say on this subject in regard to bringing Mr. Chanler here under the circumstances mentioned?

A. From my examination of Mr. Chanler, although I quite agree with Dr. Fitch, with the general principle that the alleged lunatic should always be produced if physically able to come, it seems to me that his case is so plain and distinct that it is practically unnecessary; and if it should be necessary to use force to bring
261 him down here against his will I think it would be detrimental to him. Those are my views, although I quite agree with the principle that a lunatic ought to be produced in Court if he can.

The case was then submitted to the jury.

The jury returned a verdict stating that the said John Armstrong Chanler was incompetent to manage his person or his affairs, and also stating in said verdict the property, personal and real owned by the said John Armstrong Chanler and who are his next of kin and heirs at law.

Cover endorsed: New York Supreme Court, New York County. In the Matter of John Armstrong Chanler, an alleged incompetent person. Commission, Inquisition, Exhibits and Testimony. Jay & Candler, Attorneys for petitioners, 48 Wall Street, New York City. Filed June 15, 1899.

262 At a Special Term, Part I, of the Supreme Court of the State of New York, held at the Court House in the Borough of Manhattan, County of New York, on the 23rd day of June, 1899.

Present: Hon. Henry A. Gildersleeve, Justice.

In the Matter of JOHN ARMSTRONG CHANLER, an Alledged Incompetent Person.

On reading the verified petition herein of Winthrop Chanler and Lewis S. Chanler, dated on the 8th day of May, 1899, the notice of motion and proof of service thereto annexed and the order made thereon dated the 19th day of May, 1899, the Commission herein dated on the 23rd day of May, 1899, and the inquisition taken thereon dated the 12th day of June, 1899, with the testimony and other papers thereto annexed, all duly filed in the office of the Clerk of the County of New York, and on reading and filing the notice of this motion with the verified petition of the said Winthrop Chanler and Lewis S. Chanler, dated June 14th, 1899, thereto annexed, and the affidavit of William White Whittaker verified the 16th day of June, 1899, showing due proof of service on the 15th day of June, 1899, of the said notice of motion and petition on John Armstrong Chanler, the alleged incompetent person, and on Dr. Samuel B. Lyon, the person in charge of Bloomingdale
263 Asylum, where the said incompetent person at present resides and the affidavit of Egerton L. Winthrop, Junior, verified the 22nd day of June, 1899, and on hearing Mr. Flamen B. Candler, of counsel for the petitioners and Mr. Henry Lewis Morris, attorney for William A. Chanler, Robert W. Chanler, Margaret L. Chanler, Elizabeth W. Chanler and Alida B. Emmet, heirs at law and next of kin of the said John Armstrong Chanler, who with the said petitioners are all the heirs at law and next of kin of the said John Armstrong Chanler in support of this application, and no one appearing in opposition thereto.

Now, on motion of Jay & Candler, attorneys for the said petitioners, it is

Adjudged, that the findings of the Commissioners and of the jurors upon the execution of the said commission as set forth in the said inquisition be and the same hereby are in all respects ratified and confirmed; and it is further

Adjudged as found by the said Commissioners and jurors as stated in the said inquisition, that on the 12th day of June, 1899, the time of taking the said inquisition the said John Armstrong Chanler was a lunatic and was a person of unsound mind and did not enjoy lucid intervals and was incapable of managing his person and property and that he has been in the same state of lunacy since the 10th day of March, 1897, when, as found in and by the said inquisition, he was committed to the Bloomingdale Asylum at White Plains in the State of New York under proceedings taken in

accordance with the Laws of the State of New York for the commitment to asylums of insane persons. And it is further

264 Adjudged that the prayer of the said petitioners' said petition dated June 14th, 1899, be and the same hereby is granted and that Prescott Hall Butler, Esq., a counsel-at-law, be and he hereby is appointed the Committee of the person and estate of the said John Armstrong Chanler. And it is further

Adjudged, that before the said Prescott Hall Butler as Committee as aforesaid shall enter upon the discharge of his duties as such committee he shall execute with sufficient sureties a bond in the penal sum of fifty thousand dollars conditioned for the faithful discharge of his trust as such Committee and cause the same to be approved by one of the Justices of this Court and filed in the office of the Clerk of the County of New York. And it is further

Adjudged, that out of the first moneys received by the said Prescott Hall Butler as Committee as aforesaid, he shall make the following payments, namely: he shall pay to the said Commissioners David B. Ogden, Allen W. Fitch and George Sherman, each the sum of one hundred dollars in full for his compensation as such Commissioner as aforesaid; to Jay & Candler, attorneys for the petitioners, the sum of one thousand dollars, for their services and counsel fees herein and the further sum of one hundred and ninety dollars as and for the disbursements made by them herein and to Doctor Austin Flint, Doctor Carlos F. MacDonald, and Doctor Samuel B. Lyon, the expert witnesses in this proceeding before the said Commissioners and jurors, such amounts respectively, as the said Prescott Hall Butler as Committee as aforesaid, shall

265 deem reasonable and proper.

Enter,

H. A. G., *J.*

Cover endorsed: New York Supreme Court, New York County. In the Matter of John Armstrong Chanler, an alleged incompetent person. Decretal order. Jay & Candler, Attorneys for Petitioners, Office and P. O. Address, No. 48 Wall Street, New York City, N. Y. Filed and Recorded June 23, 1899.

266 New York Supreme Court, County of New York.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

To John Armstrong Chanler, Dr. Samuel B. Lyon, Henry Lewis Morris, Esq., Attorney for William A. Chanler, and others.

GENTLEMEN: Please take notice that on the verified petition herein dated on the 8th day of May, 1899, and the notice of motion and proof of service thereto annexed, the order made thereon dated May 19th, 1899, all heretofore duly filed, and on the commission herein dated May 23rd, 1899, and the inquisition in the above entitled proceeding, dated the 12th day of June, 1899, and the testi-

mony and other papers thereto annexed duly returned and this day duly filed in the office of the Clerk of the County of New York, and the annexed petition, application will be made on behalf of the petitioners at Special Term, Part I, of this Court, to be held in and for the County of New York at the County Court House in the Borough of Manhattan, on the 23rd day of June, 1899, at 10:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard for a decretal order confirming the said inquisi-
267 tion and appointing Prescott Hall Butler, Esq., counsellor-at-law, Committee of the person and estate of the said John Armstrong Chanler, an incompetent person, and for such other and further relief as to the Court may seem just and proper.

Dated June 15th, 1899.

Yours, etc.,

JAY & CANDLER,
Attorneys for Petitioners, 48 Wall Street, New York City.

New York Supreme Court, County of New York.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

To the Honorable the Supreme Court of the State of New York:

The petition of Winthrop Chanler and Lewis S. Chanler, of the Borough of Manhattan, City, County and State of New York, respectfully shows:

First. That your petitioners are brothers of John Armstrong Chanler above named.

Second. That heretofore and on or about the 19th day of
268 May, 1899, an order was duly made and entered directing that a commission in the nature of a writ de lunatico inquirendo be issued out of and under the seal of this Court in the usual form, directed to David B. Ogden, counsellor-at-law, Allen Fitch, M. D., and George Sherman, all of the Borough of Manhattan, among other things to inquire by a jury of the said County whether the said John Armstrong Chanler is an incompetent person and incapable of managing his person and estate, and that subsequently, pursuant to the said order, a commission was duly issued out of this Court on the 23rd day of May, 1899, directed to the said David B. Ogden, Allen Fitch and George Sherman, to inquire by a jury of the said County whether the said John Armstrong Chanler is an incompetent person, by reason of which infirmity he is incapable of managing his person and property, which Commission has been duly executed and returned, with the inquisition and other papers annexed, thereto, by the Commissioners and filed on the 15th day of June, 1899, in the office of the Clerk of the County of New York and that from the said inquisition annexed to the said commission and returned therewith it appears that the jury have found that the said John Armstrong Chanler is a lunatic and is of unsound mind and does not enjoy lucid intervals so that he is incapable of manag-

ing his person and property, and that he has been in the same state of lunacy since the 10th day of March, 1897, as by reference to the said inquisition will more fully and at large appear.

Your petitioners further state that Prescott Hall Butler is a counsellor of this Court and is a man of strict integrity, high
269 character, and of large means and is a suitable and proper person to be appointed as Committee of the person and estate of the said John Armstrong Chanler, and that your petitioners have been informed that the said John Armstrong Chanler desires that the said Prescott Hall Butler should be appointed the Committee of his person and estate; that in the original petition for the issuing of a Commission, filed herein, your petitioners requested the appointment of Stanford White, but that since then the said Stanford White stated to your petitioners that he would not act as such Committee.

Your petitioners further state that as appears from the said inquisition and from the testimony thereon the value of the personal property of the said John Armstrong Chanler is very uncertain and that a bond of $50,000 would be sufficient.

Your petitioners further state that on the execution of the commission of lunacy aforesaid the Commissioners were necessarily employed for one day in the hearing of the testimony and in the taking of the inquisition, and that in their opinion if the Court should allow one hundred dollars for each of the Commissioners the same would be a satisfactory amount.

Your petitioners, therefore, pray that the said Prescott Hall Butler may be appointed the Committee of the person and estate of the said John Armstrong Chanler upon his giving the security for the faithful performance of his trust as such Committee, and according to the statutes and in conformity with the rules and practice of this Court, and for such other and further orders as the Court
270 may think proper to grant.

And your petitioners will ever pray, etc.

Dated June 14th, 1899.

WINTHROP CHANLER,
LEWIS S. CHANLER,
By WINTHROP CHANLER,
Petitioners.

JAY & CANDLER,
Attorneys for Petitioners,
48 *Wall Street, N. Y. City.*

STATE OF NEW YORK,
County of New York, ss:

Winthrop Chanler, being duly sworn, says: That he is one of the petitioners above named; that he has read the foregoing petition and knows the contents thereof and that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief and that as to those matters he believes the same to be true.

WINTHROP CHANLER.

Sworn to before me this 14th day of June, 1899.
WILLIAM WHITE WHITTAKER,
Notary Public, Kings County.

Certificate filed in New York County.

STATE OF NEW YORK,
271 *County of New York, ss:*

William White Whittaker, being duly sworn, says: That he is a clerk in the office of Jay & Candler the attorneys for the petitioners herein and is of the age of twenty-one years and upwards and that on the 15th day of June, 1899, at the Bloomingdale Asylum in the Village of White Plains, County of Westchester and State of New York at about 7 o'clock in the evening of said day he served upon John Armstrong Chanler an alleged incompetent person a copy of the within petition and notice by then and there delivering to and leaving with said John Armstrong Chanler in person a true copy of the within petition and notice and at the same time delivering to and leaving with Doctor Samuel B. Lyons the person in charge of the said Bloomingdale Asylum in person a true copy of the within petition and notice.

WILLIAM WHITE WHITTAKER.

Sworn to before me this 16th day of June, 1899.
GEO. B. GLOVER,
Notary Public, Kings County.

Certificate filed in New York County.

Cover endorsed: New York Supreme Court, New York
272 County. In the Matter of John Armstrong Chanler, an alleged incompetent person. Original petition and notice and proof of service. Jay & Candler, Attorneys for Petitioners, Office and Post Office Address, No. 48 Wall Street, New York City, N. Y. Due and timely service of a copy of the within petition and notice is hereby admitted. Dated June 15, 1899. Henry Lewis Morris, Attorney William A. Chanler and others. Filed June 23, 1899.

273 New York Supreme Court, New York County.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

STATE OF NEW YORK,
County of New York, ss:

Egerton L. Winthrop, Junior, being duly sworn, deposes and says: That he is an attorney and counsellor at law and member of the firm of Jay & Candler, attorneys for the petitioners herein and that in the month of December, 1897, Mr Winthrop Chanler, one

of the petitioners herein retained deponent's firm to represent the family in proceedings to be taken for the appointment of a committee of the person and estate of John Armstrong Chanler deponent being informed at that time that the said John Armstrong Chanler was contemplating proceedings for his release from Bloomingdale Asylum where he had been duly committed as a person of unsound mind in accordance with the laws of this State, it thereupon became necessary and deponent did carefully examine the proceedings by which the said John Armstrong Chanler had been committed to the Bloomingdale Asylum for the Insane, and deponent had a number of interviews with Doctors Samuel B. Lyon, Carlos F. MacDonald and Austin Flint and also with Mr. Henry Lewis
274 Morris and Mr. Winthrop Chanler in reference to the taking of such proceedings and that in the month of February, 1898, after receiving the reports of Doctors Carlos F. MacDonald and Austin Flint, deponent had long interviews with Doctors Lyon, MacDonald and Flint, it being expected that any time Mr. John Armstrong Chanler might take proceedings for his release; subsequently in the month of August, 1898, deponent had a long conference with Mr. Lewis A. Chanler, one of the petitioners and had some correspondence with Doctors MacDonald and Flint in reference to the condition of Mr. Chanler and arranged with these doctors to be prepared to testify when called upon at any moment.

That subsequently, in the month of April, of this year, 1899, the family commenced these proceedings for the appointment of a committee for Mr. Chanler and before these proceeding were started deponent had a cable correspondence with both the petitioners herein and also with Stanford White who represented the alleged incompetent person and thereupon Lewis S. Chanler, one of the petitioners came over from Europe to attend to the matter and subsequently Winthrop Chanler also came over from Europe for the same purpose.

Deponent further says that as soon as Lewis S. Chanler arrived, a petition and affidavits were prepared by deponent and the papers were duly served upon John Armstrong Chanler and Dr. Lyon, the Superintendent of Bloomingdale Asylum pursuant to the order of this Court and as information had been received that the proceedings would probably be contested it became necessary for deponent
275 and his partner Mr. Flamen Candler to very carefully prepare the case for trial and to have a number of interviews with Doctors Flint, MacDonald and Lyon and also deponent had a number of conferences with Winthrop Chanler one of the petitioners and with Mr. Harry Lewis Morris and with Mr. Weston to have the inventory of the said John Armstrong Chanler's property prepared so that deponent and his partner might be thoroughly prepared for the trial of the proceedings before the Commissioners and the jurors.

Deponent further says that upon the filing of the petition and affidavits an order was entered thereupon by Mr. Justice Beekman, appointing Messrs. Ogden, Fitch and Sherman the Commissioners and subsequently a commission was issued out of and under the seal of the Supreme Court to the said Commissioners. That on the 12th

day of June, 1899, the commission was duly executed before the Commissioners and a Sheriff's jury, and upon that occasion Doctors Flint, MacDonald and Lyon were examined on behalf of the petitioners as to the sanity of the said John Armstrong Chanler and Messrs. Winthrop Chanler and Weston as to the property of the said John Armstrong Chanler.

That the inquisition which had been theretofore prepared by deponent was signed by the Commissioners and jury in and by which they found that the said John Armstrong Chanler was a lunatic and of unsound mind and also found the present condition of his estate.

Deponent further says that subsequently the present commission and inquisition, *the inquisition* were prepared, and duly served upon the incompetent person and upon Dr. Samuel B. Lyon,
276 the Superintendent of the Bloomingdale Asylum for the Insane.

Deponent further says, that the proceedings taken herein were of great importance and required great care and much attention and included the prepartion of many sets of papers and in the opinion of deponent the sum of one thousand dollars would be reasonable compensation for the services rendered herein and that deponent's firm has disbursed the sum of one hundred and ninety dollars for lithographing papers, jury's fees, stenographer's minutes, clerk's fees, etc., etc.

Deponent further says, that he has consulted with Winthrop Chanler, one of the petitioners herein and also with Henry Lewis Morris who represents all the heirs at law and next of kin of John Armstrong Chanler, except Lewis S. Chanler the other petitioner, who is now in Europe, who both stated to deponent that in their opinion the fee of one thousand dollars to deponent's firm for the services rendered herein would be very moderate and entirely satisfactory to them.

Deponent further says, that he has conferred with the said three Commissioners and each has expressed his desire that the court should allow to each commissioner the sum of one hundred dollars for his compensation and they have represented to deponent that under all the circumstances of the case while such sum would be satisfactory they all believe the same to be a very reasonable charge.

Deponent further says that the expert physicians examined before the said Commissioners and jury herein were Dr. Samuel B. Lyon, Dr. Carlos F. MacDonald and Dr. Austin Flint, and they have certain claims against the estate of the said John Armstrong
277 Chanler for their compensation herein, and in the opinion of deponent the order to be made herein should contain a provision in substance leaving the payment of those claims to the discretion of the committee to be appointed in this proceeding.

EGERTON L. WINTHROP, JR.

Sworn to before me this 22nd day of June, 1899.

WILLIAM WHITE WHITTAKER,
Notary Public, Kings County.

Certificate filed in New York County.

Cover endorsed: New York Supreme Court, New York County. In the Matter of John Armstrong Chanler, an alleged incompetent person. Affidavit. Jay and Candler, Attorneys for Petitioners, Office and Post Office Address, No. 48 Wall Street, New York City, N. Y. "Filed June 23, 1899."

Know all men by these presents, that we, Prescott Hall Butler, of No. 52 Wall Street, Borough of Manhattan, City of New York
278 as principal, and the Lawyers' Surety Company of New York, having an office and principal place of business at Nos. 32, 34 & 36 Liberty Street, in the City of New York, as surety, are held and firmly bound unto John Armstrong Chanler, an incompetent person in the sum of fifty thousand ($50,000) dollars lawful money of the United States of America, to be paid to the said John Armstrong Chanler to which payment well and truly to be made the said Prescott Hall Butler binds himself, his heirs, Executors and Administrators, and the said company binds itself, its successors and assigns, jointly and severally, firmly by these presents. Sealed with our seals. Dated the 26th day of June one thousand eight hundred and ninety-nine.

Whereas, by an order of the Honorable Henry A. Gildersleeve, Justice, at a Special Term of the Supreme Court, held in the County of New York on the 23d day of June, 1899, the above bounden Prescott Hall Butler was appointed the Committee of the person and estate of said incompetent.

Now, therefore, the condition of this obligation is such, that if the above bounden Prescott Hall Butler will, in all things, faithfully discharge the trust reposed in him and obey all lawful directions of the said Court, or of a Justice thereof, or of any other Court or Judge having jurisdiction thereof, touching the said trust; and if he will, in all respects, render a just and true account of all moneys and other property received by him and of the application thereof, and of his Committeeship, whenever he is required so to do by the said Court, or a Court of competent jurisdiction, then this obliga-
279 tion to be void, otherwise to remain in full force and virtue.

PRESCOTT HALL BUTLER. [L. S.]
THE LAWYERS' SURETY COMPANY
OF NEW YORK,
[SEAL.] By THOMAS HUNT, *2nd Vice-President.*

Attest:
JOEL RATHBONE, *Secretary.*

Sealed and delivered in presence of:
WM. R. MONTGOMERY, as to P. H. B.
H. G. HINTON, as to L. S. Co.

At a stated meeting of the Board of Directors of The Lawyers' Surety Company of New York, held at the office of the company, Nos. 32, 34 & 36 Liberty Street, in said City, on the 21st day of April, 1897, on motion it was unanimously

"Resolved, that the President, the Vice-President, the Acting Pres-
"ident, or the second Vice-President, be, and either of them is,
"hereby authorized and empowered to sign, execute and deliver any
"and all bonds or undertakings, for or on behalf of the company,
"and to attach thereto the seal of the corporation, the same to be at-
"tested by the Secretary or Acting Secretary."

COUNTY OF NEW YORK, *ss:*

I, Joel Rathbone, Secretary of The Lawyers' Surety Company of New York, have compared the foregoing resolution with the
280 original thereof, as recorded in the Minute Book of said company, and do certify that the same is a true and correct transcript therefrom, and of the whole of said original resolution.

Given under my hand and the seal of the Company, at the City of New York, this 26th day of June, 1899.

[SEAL.] JOEL RATHBONE.

(10c. R. S. Cancelled.)

COUNTY OF NEW YORK, *ss:*

On this 26th day of June, 1899, before me personally appeared Thomas Hunt, 2d Vice-President of The Lawyers' Surety Company of New York, with whom I am personally acquainted, who, being by me duly sworn, said: That he resides in the City of New York; that he is the 2nd Vice-President of The Lawyers' Surety Company of New York, the corporation described in and which executed the above instrument; that he knows the corporate seal of said company; that the seal affixed to the within instrument is such corporate seal; that it was affixed by order of the Board of Directors of said company, and that he signed said instrument as 2nd Vice-President of said Company by like authority. And the said Thomas Hunt further said that he is acquainted with Joel Rathbone and knows him to be the Secretary of said company; that the signature of said Joel Rathbone subscribed to the said instrument is in the genuine handwriting of the said Joel Rathbone and was thereto subscribed by the like order of the said Board of Directors and in the presence
281 of him the said Thomas Hunt, 2nd Vice-President.

H. G. HINTON,
Notary Public, Kings Co., N. Y.

Certificate filed in N. Y. Co.

10c. R. S. cancelled.

COUNTY OF NEW YORK, ss:

On this 27th day of June, 1899, before me personally appeared the within named Prescott Hall Butler, to me known and known to me to be the individual described in and who executed the within bond, and acknowledged that he executed the same.

WM. R. MONTGOMERY,
Notary Public, New York County.

Cover endorsed: New York Supreme Court. In the Matter of John Armstrong Chanler, an incompetent person. Committee Bond. Surety; The Lawyers' Surety Company of New York. I approve of the within Bond, and of the sufficiency of the Surety. June 27th, 1899. Henry R. Beekman, J. S. C. Filed and Recorded June 27, 1899.

282 At a Special Term, Part II, of the Supreme Court of the State of New York, Held at the County Court House in the County of New York, on the 19th day of November, Nineteen hundred and one.

Present: Hon. John Proctor Clarke, Justice.

In the Matter of JOHN ARMSTRONG CHANLER, an Incompetent Person.

Upon reading and filing the petition of Prescott Hall Butler herein, duly verified November 15, 1901, by which it appears that the said Prescott Hall Butler was duly appointed the Committee of the person and property of John Armstrong Chanler, an incompetent person, by order of this Court bearing date June 23, 1899, and thereafter duly qualified and has since acted as such Committee; that the said Prescott Hall Butler has been for several months last past seriously ill and that he is now seriously ill and confined to his bed and unable to perform his duties as Committee of the person and the property of the said John Armstrong Chanler, and that he desires to be relieved from such duties and from the office of such Committee, in and by which petition the said Prescott Hall Butler resigns his office and duties as Committee of the person and property of the said John Armstrong Chanler and prays that
283 such, his resignation may be accepted and that Thomas T. Sherman may be appointed Committee of the person and property of the said John Armstrong Chanler in his place; and upon also reading and filing the consent, duly acknowledged, of the said Thomas T. Sherman to be appointed and to act as such Committee of the person and property of the said John Armstrong Chanler, and upon also reading and filing the bond of the said Thomas T. Sherman to the said John Armstrong Chanler in the penalty of fifty thousand dollars with the Lawyers' Surety Company of New York, as surety, conditioned for the faithful discharge of his trust as such

Committee and duly approved as to form and sufficiency of surety by a Justice of this Court,

Now, upon motion of Evarts, Choate & Beaman, attorneys for said petitioner,

It is ordered that the prayer of the said petition be and the same is hereby granted; that the resignation of the said Prescott Hall Butler as Committee of the person and property of the said John Armstrong Chanler be, and the same is hereby accepted, and that he be, and he hereby is, relieved from all further performance of any duties as such Committee of the person and property of said John Armstrong Chanler.

And it is further ordered that Thomas T. Sherman of the Town of Rye in the County of Westchester be and he hereby is appointed the Committee of the person and property of the said John Armstrong Chanler and that the said Prescott Hall Butler transfer, deliver and pay over to the said Thomas T. Sherman, as such Committee of the property of said John Armstrong Chanler all
284 property and moneys of the said John Armstrong Chanler now in the hands of said Prescott Hall Butler as such Committee.

And it is further ordered that the said Prescott Hall Butler hereafter, as soon as practicable, render to this Court an account of his proceedings as Committee of the person and property of the said John Armstrong Chanler and that when the same shall have been duly examined, passed upon and settled and allowed by this Court, the said Prescott Hall Butler be released and discharged from all further liability, responsibility and accountability for or by reason of any of his acts or doings or omissions, if any, as such Committee and that the bond given by him as such Committee be cancelled and surrendered to him or his attorneys.

And it is further ordered that application herein may be made at any time at the foot of this order for further direction or order with respect to the settlement of the accounts of the said Prescott Hall Buler as such Committee and his release and discharge.

Enter,

J. P. C., *J. S. C.*

285 New York Supreme Court, County of New York.

In the Matter of JOHN ARMSTRONG CHANLER, an Incompetent Person.

To the Supreme Court of the State of New York:

The petition of Prescott Hall Butler respectfully shows:

That by order of this Court, bearing date June 23, 1899, and entered in the office of the Clerk of the County of New York, entitled "In the matter of John Armstrong Chanler, an alleged incompetent person," the said John Armstrong Chanler was adjudged to be incompetent to manage himself or his affairs by reason of lunacy and

your petitioner was appointed the Committee of the person and property of the said John Armstrong Chanler upon executing and filing his bond in the penalty of fifty thousand dollars with sufficient surety conditioned for the faithful discharge of his trust as such Committee, such bond to be approved by a Justice of this Court; that your petitioner duly executed and filed such bond duly approved by a Justice of this Court and that your petitioner has ever since been and acted as and now is the Committee of the person and property of the said John Armstrong Chanler.

That the property and affairs of the said John Armstrong
286 Chanler have been and are in such a condition that they require constant attention for the proper management thereof.

That your petitioner has been for several months last past seriously ill and is now seriously ill and confined to his bed and unable to attend to business or to the affairs of the said John Armstrong Chanler, and your petitioner desires to be immediately relieved from his office as Committee of the person and property of the said John Armstrong Chanler and that another Committee of the person and property of the said John Armstrong Chandler be appointed in the place of your petitioner at once, and without the delay incident to the stating and settlement of the account of the proceedings of your petitioner as such Committee, which your petitioner is ready and willing to make as speedily as possible.

That your petitioner hereby resigns his office and duties as Committee of the person and as Committee of the property of the said John Armstrong Chanler.

That Thomas T. Sherman, counsellor at law, who have been a member of the bar of this State for upwards of twenty years last past, during all of which time he has been associated in business with your petitioner in the same office and who is familiar with the affairs of the estate of the said John Armstrong Chanler and has assisted your petitioner in the management thereof, is, as your petitioner believes, a competent and responsible person to be appointed and to act as Committee of the person and property of the said John Armstrong Chanler in the place and stead of your petitioner, that he has
287 consented to be appointed and to act as such Committee and to give the same security for the performance of his duties as was given by your petitioner.

Wherefore, your petitioner prays that his said resignation as Committee of the person and as Committee of the property of the said John Armstrong Chanler may be accepted by this Court, and that he may be relieved from his office and duties as such Committee; that Thomas T. Sherman of the Town of Rye in County of Westchester, may be appointed Committee of the person and property of the said John Armstrong Chanler in the place of your petitioner, and that upon his appointment and qualification as such Committee, your petitioner may be directed to transfer, deliver and pay over to the said Thomas T. Sherman, as Committee of the property of the said John Armstrong Chanler all moneys and property of the said John Armstrong Chanler now in the hands or under the control of your petitioner and that your petitioner may be per-

mitted, as speedily as possible hereafter, to render to this Court his account of all of his proceedings as Committee of the person and property of the said John Armstrong Chanler and that the same may be judicially examined, passed upon and settled and that upon such settlement thereof your petitioner may be discharged from all further duty, responsibility and accountability for or by reason of any of his acts or doings or omissions, if any, as such Committee and that the bond given by him as such Committee may be thereupon cancelled and surrendered to your petitioner or his attorneys and that your petitioner may have such other or further order
288 or relief in the premises as may be proper and to the Court seem meet.

And your petitioner will ever pray, etc.

PRESCOTT HALL BUTLER, *Petitioner.*

EVARTS, CHOATE & BEAMAN,
Attorneys for Petitioner.

52 Wall Street, Borough of Manhattan, City of New York.

COUNTY OF NEW YORK, *ss:*

Prescott Hall Butler, being duly sworn, deposes and says: That he is the petitioner above named; that he has read the foregoing petition by him subscribed, and knows the contents thereof, and that the same is true to his own knowledge except as to the matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

PRESCOTT HALL BUTLER.

Sworn to before me this 15th day of November, 1901.

WM. R. MONTGOMERY,
Notary Public, New York County.

289 New York Supreme Court, County of New York.

In the Matter of JOHN ARMSTRONG CHANLER, an Incompetent Person.

I, Thomas T. Sherman, of the Town of Rye in the County of Westchester, do hereby consent to be appointed and to act as the Committee of the person and property of John Armstrong Chanler an incompetent person.

Dated, New York, November 15, 1901.

THOS. T. SHERMAN.

STATE OF NEW YORK,
County of New York, ss:

On this fifteenth day of November, nineteen hundred and one, before me personally appeared Thomas T. Sherman, to me known, to be the person described in and who signed and executed the fore-

going consent and acknowledged to me that he signed and executed the same.

WM. R. MONTGOMERY,
Notary Public, New York County.

290 Cover endorsed: New York Supreme Court, County of New York. In the Matter of John Armstrong Chanler, an incompetent person. Petition and order. Evarts, Choate & Beaman, Attorneys for Petitioner, 52 Wall Street, New York City. Filed and Recorded Nov. 19, 1901.

Know all men by these presents, that we, Thomas T. Sherman, of the Town of Rye in the County of Westchester, State of New York as principal, and The Lawyers' Surety Company of New York, having an office and principal place of business at Nos. 32, 34 and 36 Liberty Street, in the City of New York, as surety, are held and firmly bound unto John Armstrong Chanler, an incompetent person in the sum of fifty thousand (50,000) dollars, lawful money of the United States of America, to be paid to the said John Armstrong Chanler to which payment well and truly to be made the said Thomas T. Sherman binds himself, his heirs, Executors and Administrators, and the said company binds itself, its successors and assigns, jointly and severally, firmly by these presents. Sealed with our seals. Dated the 18th day of November, 1901.

Whereas, by an order of the Supreme Court, County of
291 New York, about to be made and entered herein the above bounden Thomas T. Sherman is to be duly appointed the Committee of the person and property of said incompetent in the place and stead of Prescott Hall Butler retired.

Now, therefore, the condition of this obligation is such, that if the above bounden Thomas T. Sherman will, in all things, faithfully discharge the trust reposed in him and obey all lawful directions of the said Court, or of a Justice thereof, or of any other Court or Judge having jurisdiction thereof, touching the said trust; and if he will, in all respects render a just and true account of all moneys and other property received by him and of the application thereof, and of his Committeeship, whenever he is required so to do by the said Court, or a Court of competent jurisdiction, then this obligation to be void, otherwise to remain in full force and virtue.

THOS. T. SHERMAN. [L. S.]
THE LAWYERS' SURETY COMPANY
OF NEW YORK,
By THOMAS HUNT, [L. S.]
2nd Vice President.

Sealed and delivered in presence of:
WM. R. MONTGOMERY,
As to T. T. Sherman.
H. G. HINTON,
As to L. S. Co.

Attest:
JOEL RATHBONE, *Secretary.*

At a stated meeting of the Board of Directors of The
292 Lawyers' Surety Company of New York, held at the office of the company, Nos. 32, 34 and 36 Liberty Street, in said City, on the 21st day of April, 1897, on motion, it was unanimously

"Resolved, That the President, the Vice-President, the Acting "President, or the second Vice-President, be, and either of them is, "hereby authorized and empowered to sign, execute and deliver any "and all bonds or undertakings, for or on behalf of the company, "and to attach thereto the seal of the corporation, the same to be "attested by the Secretary or Acting Secretary."

CITY AND COUNTY OF NEW YORK, *ss:*

I, Joel Rathbone, Secretary of The Lawyers' Surety Company of New York, have compared the foregoing resolution with the original thereof, as recorded in the minute book of said company, and do certify that the same is a true and correct transcript therefrom, and of the whole of said original resolution.

Given under my hand and the seal of the company, at the City of New York, this 18th day of November, 1901.

[L. S.] JOEL RATHBONE, *Secretary.*

COUNTY OF NEW YORK, *ss:*

On this 18th day of November, 1901, before me personally appeared Thomas Hunt, 2nd Vice President of The Lawyers' Surety Company of New York, with whom I am personally acquainted, who, being by me duly sworn, said: that he resides in the City of New York, that he is the 2nd Vice President of The Lawyers' Surety Company of New York, the corporation described in and
293 which executed the above instrument; that he knows the corporate seal of said company; that the seal affixed to the within instrument is such corporate seal; that it was affixed by order of the Board of Directors of said company, and that he signed said instrument as 2nd Vice President of said company by like authority. And the said Thomas Hunt further said that he is acquainted with Joel Rathbone, and knows him to be the Secretary of said company; that the signature of said Joel Rathbone subscribed to the said instrument is in the genuine handwriting of the said Joel Rathbone and was thereto subscribed by the like order of the said Board of Directors and in the presence of him the said Thomas Hunt, 2nd Vice President.

H. G. HINTON,
Notary Public, Kings County, N. Y.

Certificate filed in N. Y. Co.

COUNTY OF NEW YORK, *ss:*

On the nineteenth day of November, 1901, before me personally appeared the within named Thomas T. Sherman, to me known and known to me to be the individual described in and who executed

the within bond, and acknowledged to me that he executed the same.

WM. R. MONTGOMERY,
Notary Public, New York County.

294 Cover endorsed: N. Y. Supreme Court. In the Matter of John Armstrong Chanler, an incompetent person. Committee Bond. Surety: The Lawyers' Surety Company of New York. Filed and Recorded Nov. 19, 1901. I approve of the within Bond, and of the sufficiency of the surety. New York, November 19th, 1901. John Proctor Clarke, Justice of the Supreme Court of the State of New York.

No. 776. Form 9.

STATE OF NEW YORK,
County of New York, ss:

I, Peter J. Dooling, Clerk of the said County and Clerk of the Supreme Court of said State for said County, do certify, that I have compared the preceding with the original record on file in my office, and that the same is a correct transcript therefrom, and of the whole of such original.

In witness whereof, I have hereunto subscribed my name and affixed my official seal, this 11th day of October, 1906.

[SEAL.] PETER J. DOOLING, *Clerk.*

295 All of which we have caused by these presents to be exemplified, and the seal of our said Supreme Court to be hereunto affixed.

Witness, Hon. David Leventritt, a Justice of the Supreme Court for the County of New York, the twenty-fifth day of October in the year of our Lord one thousand nine hundred and six, of our independence the one hundred and thirty-first.

[SEAL.] PETER J. DOOLING, *Clerk.*

I, David Leventritt, a Presiding Justice at a Special Term of the Supreme Court of the State of New York for the County of New York, do hereby certify that Peter J. Dooling, whose name is subscribed to the preceding exemplification, is the Clerk of the said County of New York, and Clerk of said Supreme Court for said County duly elected and sworn, and that full faith and credit are due to his official acts. I further certify that the seal affixed to the exemplification is the seal of our said Supreme Court, and that the attestation thereof is in due form.

Dated, New York, Oct. 25th, 1906.

DAVID LEVENTRITT,
Justice of the Supreme Court of the State of New York.

STATE OF NEW YORK,
City and County of New York, ss:

I, Peter J. Dooling, Clerk of the Supreme Court of said State in and for the County of New York, do hereby certify that Hon. David Leventritt, whose name is subscribed to the preceding certificate, is Presiding Justice at a Special Term of the Supreme
296 Court of said State in and for the County of New York, duly elected and sworn, and that the signature of said Justice to said certificate is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court, this 25th day of Oct., 1906.

[SEAL.] PETER J. DOOLING, *Clerk.*

297 PLAINTIFF'S EXHIBIT 4.

Office of Chesapeake and Ohio Railway Co.

STATION LINDSAY, VA., July 13th, 1905.

Mr. John Armstrong Chanler, Cobham, Va.

DEAR SIR: Your letter of July 13th, 1905, notifying me that you have taken up your citizenship at Roanoke Rapids, N. C., and are therefore no longer a citizen of this State and requesting me therefore to remove your name from the list of registered voters of this District received.

I have this day erased your name from the Registration Book; and under the heading "If transferred, when and to what precinct," make the following entry, "Roanoke Rapids, N. C., July 13th, 1905."

Yours truly,

H. G. MAHANES,
Registrar, Lindsays Precinct.

298 PLAINTIFF'S EXHIBIT 5.

This is to certify that John Armstrong Chanler was registered by me as a qualified voter under the New Constitution of Virginia, of Lindsay Precinct, in Albemarle County, Virginia, in October 1902, and that he voted at the election in November, 1902, and that his name is enrolled on the list of permanent voters in Virginia, and recorded in the Clerk's office of Albemarle County.

Witness my hand this the 11 day of July, 1905.

FREDERICK K. PAGE,
Chairman of Board of Registrars for Rivanna District, Albemarle County, Virginia.

(In 1902.)

I, W. L. Maupin, Clerk of this Circuit of the County of Albemarle, Virginia, do certify that F. K. Page who gives the foregoing certifi-

cate was duly qualified as Chairman of Board of Registrars and that Mr. John Armstrong Chanler is a duly qualified voter of this county under the laws of this state.

Given under my hand with the seal of the Court affixed this 12 day of July, 1905.

[Seal of Virginia.]

W. L. MAUPIN, *Clerk.*

299 PLAINTIFF'S EXHIBIT 6.

Marked for identification only.

PLAINTIFF'S EXHIBIT 7.

Marked for identification only.

PLAINTIFF'S EXHIBIT 8.

Copy of inventory and account of Thomas T. Sherman as Committee of the property of John Armstrong Chanler, dated and sworn to December 1, 1903, and filed in the office of the Clerk of the County of New York the same day.

(Not printed in the record by agreement of counsel.)

PLAINTIFF'S EXHIBIT 9.

Copy of statement of account of Stanford White, as attorney in fact and custodian of the property of John Armstrong Chanler, from March 4, 1897, to July 6, 1899.

(Not printed in the record by agreement of counsel.)

PLAINTIFF'S EXHIBIT 10.

Copy of inventory and account of Thomas T. Sherman as Committee of the property of John Armstrong Chanler, dated and sworn to January 31, 1905, and filed in the office of the Clerk of the County of New York the same day.

(Not printed in the record by agreement of counsel.)

300 PLAINTIFF'S EXHIBIT 11.

Copy of account of the Executors of Prescott Hall Butler, deceased, dated May 31, 1906, rendered in an action instituted in the New York Supreme Court, New York County, by Thomas T. Sherman, individually and as Committee of the property of John Armstrong Chanler, an incompetent person, plaintiff, against John Armstrong Chanler, an incompetent person, and others, defendants.

(Not printed in the record by agreement of counsel.)

301 *Stipulation as to Exhibits Offered but Not Received in Evidence, Including Exhibits Marked for Identification.*

United States District Court for the Southern District of New York.

JOHN ARMSTRONG CHALONER, Plaintiff-in-Error,
against
THOMAS T. SHERMAN, Defendant-in-Error.

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that the depositions taken by either of the above named parties prior to the trial had herein and plaintiff's printed brief and appendix which was handed up to the Trial Court on the trial of this action, and all exhibits marked for identification upon the trial of this action may be and hereby are treated upon the appeal herein as model exhibits, and it is hereby stipulated and agreed, that said depositions, plaintiff's printed brief and appendix, and all exhibits marked for identification may be handed to the Judge presiding in the United States Circuit Court of Appeals upon the argument of this appeal in said Court without the necessity of printing said depositions, plaintiff's brief and appendix, and exhibits marked for identification in the record herein, subject to objection, however, by the defendant-in-error, the right to make which is hereby reserved, as to all or any of said depositions, plaintiff's brief and appendix, and exhibits, etc., properly con-
302 stituting a part of the record on appeal herein.

Dated, New York, October 22, 1913.

WILLIAM DIKE REED,
Attorney for Plaintiff-in-Error.
EVARTS, CHOATE & SHERMAN,
Attorneys for Defendant-in-Error.

303 PLAINTIFF'S EXHIBIT 6 FOR IDENTIFICATION.

Offered, but not received in evidence, except as to the certain portion thereof incorporated in the Bill of Exceptions and printed at page 115 of the record. (Printed thus in full by consent of counsel, subject, however, to the reservations to counsel for the defendant-in-error defined in the preceding stipulation.)

COUNTY OF ALBEMARLE,
State of Virginia, ss:

I, Micajah Woods, Commonwealth's Attorney for Albemarle County, Virginia, being duly sworn depose and say that I received the appended letter addressed to me, under date July 3, 1897, in October, 1897, that the said letter is in the handwriting of John Armstrong Chanler and signed by John Armstrong Chanler.

MICAJAH WOODS.

Sworn to before me this 12th day of July, 1905.

JOHN W. FISHBURNE,
Notary Public for the County of Albemarle, in the State of Virginia.

My term of office expires September 19th, 1906.

JOHN W. FISHBURNE,
Notary Public, Albemarle Co., Va.

STATE OF VIRGINIA,
County of Albemarle, To wit:

I, W. L. Maupin, Clerk of the Circuit Court of the County of Albemarle in the State of Virginia, the same being a Court of Record, do certify that John W. Fishburne, whose genuine signature is affixed to the foregoing and annexed certificate was at the
304 time of signing the same a Notary Public in and for the County and State aforesaid duly commissioned and qualified according to law and authorized to take proof and acknowledgment of deeds and other instruments of writing.

His commission expires 19th day of Sept., 1905.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court this 12th day of July, 1905.

[SEAL.] W. L. MAUPIN, *Clerk.*

STATE OF VIRGINIA,
County of Albemarle, To wit:

I, John M. White, Judge of the Circuit Court for the County of Albemarle, of the State of Virginia, do hereby certify that W. L. Maupin, whose name is affixed to the foregoing certificate dated the 12th day of July, 1905, is the Clerk of the Circuit Court for the County of Albemarle, in the State of Virginia, which Court is a court of record, and the signature affixed to the said certificate is that of the said W. L. Maupin, and genuine, and the seal thereto affixed is the seal of said Court, and the said Clerk is duly qualified to act.

Witness my hand this 9th day of October, 1911.

JOHN M. WHITE,
Judge of the Circuit Court for the County of Albemarle, in the State of Virginia.

STATE OF VIRGINIA,
County of Albemarle, To wit:

I, W. L. Maupin, Clerk of the Circuit Court for the County of Albemarle of the State of Virginia, do hereby certify that Hon. John M. White is to me personally known, and that I am familiar with his signature and know the signature subscribed to the fore-
305 going certificate to be that of the Hon. John M. White, Judge of the Circuit Court for the County of Albemarle, in the State of Virginia, and to be genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 9th day of October, 1911.

[SEAL.] W. L. MAUPIN, *Clerk.*

"The Society of The New York Hospital,"
White Plains, New York.

JULY 30/97.

Hon. Micajah Woods, "Commonwealth's Attorney," Charlottesville, Albermarle County, Virginia.

MY DEAR CAPTAIN: You will possibly be surprised to hear that I am not Abroad, as is generally thought; but am confined, without due process of law, in a New York Private Insane Asylum: whither I was brought by force, against my expressed will: having been arrested by two officers in plain clothes, on an Order from a Judge of The Supreme Court of The State of New York.

You will pardon the length of this letter when I say that I wish to employ you as Assistant Counsel, with Senator John W. Daniel as Leading Counsel, in a Habeas Corpus Proceedings which I wish instituted without delay. I enclose a Certified Copy of my "Commitment Papers" which I suggest that you defer reading, until you have finished this letter; as they are a tissue of perjuries from be-
306 ginning to end, and this letter will point out and prove the said perjuries in their order.

Before going into the "Commitment Papers" I shall give you a short account of what led to my present predicament.

I have been on unfriendly terms with my family—my brothers and sisters—for a long time. It is not necessary to go into the causes which led to this state of affairs except to say that they are partly business, and partly temperamental. The line of demarkation began nine years ago, and has gradually extended ever since. The climax of unpleasantness was reached last October. My youngest sister was then married, and I was to have "given her away." Ill health prevented my presence at the wedding. I had been confined to my bed at my Home—"The Merry Mills" Cobham—for several days before its date and was in bed at the time. The wedding took place at my sister's Home on the Hudson River. I sent a note by a special messenger, explaining my inability to be present, and also, bearing a handsome present from myself to the bride. The messenger arrivd at my sister's Home the day before the wedding. As there were four other brothers of the bride present at the wedding I felt that my absence would not throw any difficulties in the way of "giving her away."

It seems that my absence from that wedding was the main cause of my present incarceration in a Mad House.

About a month later one of my sisters—with whom I was on better terms than the other brothers and sisters—while lunching with me during one of my business trips to New York, said,
307 touching my absence from the wedding, that the family were not put out at my absence from the wedding—they simply considered me crazy.

I did not pay much attention to this—thinking it a species of joke, which I had grown accustomed to from years of hearing. For whenever, in the course of an argument with any of my brothers or sisters I said anything which they found difficult to combat, their usual reply was "You're crazy."

You must excuse my touching upon such a seemingly unimportant matter, but in crime nothing is unimportant—and you will see, before finishing this letter, that a crime has been committed against the liberty and the reason of a citizen of the sovereign State of Virginia—myself.

The next complication of the already severely strained relations between "the family" and myself occurred in December last. I was still detained in New York on the business trip before alluded to At a Directors' meeting of The Roanoke Rapids Power Company—of Roanoke Rapids, North Carolina—held in New York last December, a most violent altercation arose between my brother Mr. Winthrop A. Chanler and myself. The upshot of it was that he wrote me a letter next day refusing to speak to me or have any further communication with me except in writing or through third parties. As this brother had struck me some years ago, and had quarrelled violently with me frequently since, the above communication did not surprise me. Mr. Winthrop A. Chanler is one year my junior, and was Director with me in The Roanoke Rapids Power Company.

308 I accepted his proposition, and sent a representative next day to say to him that I did so. I also notified him that I should send a representative to go over the books of my Father's Estate of which he was an executor. This Estate has not furnished but two accountings in ten years. I do not suspect my brother of wilful mismanagement, but I do suspect the lawyers he employs, to do the work of investment etc. for him, of investments which are more to their own interests than that of the said Estate. My brother agreed to my proposition and I thought no more about it. About this time I returned to Virginia. I had arranged my business affairs before leaving so as to allow me to take at least two months' rest.

I must tell you that for some years I have been carrying on investigations in Esoteric Buddhism. You must not imagine from this that I am not a Christian, for I am a Communicant in the Episcopal Church. My investigations were entirely scientific in their nature, and totally free from any tinge of religion. They supposed a state of mind open to impressions and free from prejudices. I am not going to bore you with a lecture on Esoteric Buddhism, and shall dismiss the subject.

In the latter part of February last I received a telegram from my friend Mr. Stanford White proposing to visit me in company with a mutual friend. As I was on rather unfriendly terms with Mr. White, owing to an abusive letter he had recently written me, I did not look forward to a visit from him with pleasure. I therefore sent him a telegram to say that I was not well enough to see

309 him. A few days later Mr. White walked in on me in company with a physician.

I shall not attempt to picture my surprise. Let it suffice to say that I was struck dumb.

Mr. White hastily excused his intrusion, and implored me to accompany him to New York for a plunge into the Metropolitan whirl. As I had some business which needed my attention in New York I consented. I stopped at the Hotel Kensington, Fifteenth Street and Fifth Avenue, where I have been in the habit of putting up, on my business trips to New York. A day or so after my arrival, and while immersed in my business affairs, the physician who had accompanied Mr. White to Virginia presented himself in my rooms followed by a stranger, whom he introduced as an oculist.

The reason he gave for breaking in on my privacy was the intense desire, on the part of his friend the oculist, to examine my eyes. I might say here incidentally that during my rest at home in Virginia my eyes had undergone rather a remarkable change. Their color having changed from brown to gray. I shall resume that subject later, and shall merely say that after criticizing Dr. Eugene Fuller, the physician who had accompanied Mr. White, to my home in Virginia, rather severely, for bringing a stranger into my rooms without asking permission, I allowed Dr. M. Allen Starr—the oculist—to examine my eyes. Dr. Starr took a lens from his pocket and, asking me to go to the light, examined my eyes attentively. He unhesitatingly pronounced them gray in color.

I may as well reopen the subject of the change of color of my eyes.

310 You may have noticed that my eyes were light brown. I say, "may have" for that assumes two things—first that you are free from that not unusual affection, color-blindness—second that you have the rather unusual powers of observation demanded by my assumption that you noticed my eyes at all.

At all events, they were light brown. The extraneous and corroborative evidence of this fact is the description of Dering's eyes, on page thirty-nine of the latest edition of "The Quick Or The Dead" which I enclose:

Dering having been sketched from me—I allude to the features of course, the occurrences in the book being entirely imaginary. I have the Princess Troubetzkoy's word for this: it is also a matter of almost common knowledge; the New York World having published an article on the Princess Troubetzkoy—in February, 1896, if I remember rightly—which quoted as descriptive of me the passage above referred to on page thirty-nine of "The Quick Or The Dead;" and the writer of the World article vouched for its correctness, as a description of my personal appearance, in the article itself. You will observe that Dering's eyes are described as "the color of Autumn pools in sunlight." I need not say to a Virginian that the color of Autumn pools in sunlight is brown. A sparkling or bright brown. The pools meant are the deep quiet places in streams into which the dead leaves fall, covering the bottom and giving a dark brown appearance to the water, which is lightened or brightened when the sun plays upon the pool.

311 So much for what the color of my eyes was before they changed. Their color now is a dark gray. As authority for this statement I have the testimony of every physician who

has examined them—and there have been three besides that of subordinates in this establishment, whose opinion as to the color of my eyes I have asked. You must excuse my dilating upon so seemingly unimportant a subject as the color of my eyes; but I assure you it is far from unimportant in this case for the first count in the indictment against my reason, in the "Commitment Papers," made by the "Medical Examiners In Lunacy" is to the effect that I am insane because I say that my eyes have changed color; both said "Medical Examiners In Lunacy" having freely admitted that my eyes are undeniably gray. Apparently they hope to prove that gray has always been the color of my eyes.

The next step in the proceedings was a nocturnal visit from Dr. M. Allen Starr, the oculist, accompanied by another doctor, whom I had never seen, and two unknown men. Dr. Starr pushed his way into my rooms, followed by the strange doctor, unannounced. The two unknown men remained outside my door. He then briefly informed me that he (Dr. Starr) was a professor of Nervous diseases in a New York college and that I was insane. He went on to say that he had come to take me away—he omitted to state where—immediately—that I must get up at once (I was in bed at the time) that resistance on my part would be useless as there was another doctor—the said strange doctor—in the next room besides two other men—the said unknown men—outside my door.

312 It is not necessary for me to repeat my reply. I shall simply say that I very quietly, but at the same time effectively, refused to obey Dr. Starr's orders. I succeeded in convincing him, without the slightest show of force, that he had not brought enough men with him to carry me off that night.

The next afternoon two policemen in plain clothes presented themselves at my hotel with the "Commitment Papers," a certified copy of which I enclose. I accompanied them without unnecessary discussion to this private Insane asylum.

Before going into the Commitment Papers I shall briefly touch on my life here for the past four months. I was brought here the thirteenth of March. Since that time I have been in solitary confinement in a two-roomed cell. A keeper sleeps in one of the rooms of my cell, and is always with me. When I take exercise in the Asylum grounds the keeper accompanies me. My razors were seized on the ground that it was "the rule of the Institution." The consequence was that I had to be shaved by the Asylum barber, which caused me not only inconvenience but hardship, since my beard is thick and my skin is thin, and no barber has been able to shave me without causing a violent irritation of the skin, a condition which is always absent when I shave myself.

You must excuse the above apparently trivial incident, but you will appreciate the annoyance it is to me to be shaved by the Asylum barber when I tell you that his shaving raises such a rash on my neck that I have limited his operations to twice a week: thus giving the inflammation time to subside—to begin afresh on the next shave.

313 You know from my having had the pleasure of dining at your house, that I am limited to a very abstemious diet—that I am practically a vegetarian.

You also probably know that I ride a great deal on horseback. It is in fact my favorite and only form of outdoor exercise.

You can well imagine the deleterious effect upon my health resultant from a combination of bad cooking, poor food, and total deprivation of horse-back exercise. Of the cooking I shall simply say that the Asylum cooks cannot even bake bread though they daily attempt it, so that I have been forced to buy crackers to avoid the violent indigestion the half-baked bread caused me. Of the food I shall simply say that it has been so bad that I have come down to a daily diet of baked potatoes, lettuce, fruit and crackers, in order to avoid eating food which is badly cooked, adulterated, or decayed.

In the meantime I am living in a Madhouse. Every "patient" in the building I am imprisoned in is hopelessly insane.

At times some of them become violently homicidally insane: when after yells and struggles with keepers, and a siege with a straight-jacket they are forcibly removed to another ward. Since my arrival two patients were removed for having become "violent" as they called it here.

Nothing prevents a patient from becoming homicidally insane at any time.

In one of such fits of frenzy the lunatic might take it into his head to walk into my cell and attack me. The cell doors are unlocked, and although there is a keeper on watch on my floor he is not always there. To give me warning of the approach of prowling maniacs I put a table against my door at night.

314 This will give you an idea of my surroundings. I think that you will agree with me that they are calculated to drive a man insane.

When you to the "surroundings" the active and sustained efforts of th at doctors to talk me into becoming insane, by declaring to hat I am insane, and attempting to argue me into adm n,—when you consider this you will, I think conclu my nerves and will-power under effective control ir remain sane.

So for my life for the last four months. This is the first opportu y which I have had of posting a letter unbeknown to the authorities here. The rule is, that all letters and telegrams must be sent through the authorities here, who have the legal right to suppress or forward to "The Commission In Lunacy" at Albany, who have again the legal right to suppress or destroy them. You can readily understand that I would not send a letter under such conditions. Hence my having to wait four months to write to you and ask your aid.

The next thing to be considered is the "Commitment Paper." I shall only touch upon that briefly, for it speaks for itself.

In the first place the "Commitment Paper" gives my residence as "Hotel Kensington, New York City." This is false, as my residence since 1895 has been "The Merry Mills," Cobham, Albemarle County, Virginia. "Trow's Directory" of New York City gives my residence Virginia. In "Trow's Directory" for July, 1896, to July, 1897, you will find "John A. Chanler lawyer 120 Broadway h. Va." "H"

stands for house, i. e., home, residence, and "Va." of course stands for Virginia.

315 I have never practised law in New York, but have been a silent partner in the law firm of "Chanler, Maxwell and Philip of 120 Broadway" which firm name you will find a few places below my own in "Trow's Directory" of the above date.

There can be no doubt about my residences being in Virginia, for in 1895 I went to The Commissioner of Taxes' office, in the Stewart Building, corner of Broadway and Chambers Street, and myself wrote, at his request, in the Tax Book a full description of my residence. It is of course there yet. It is to the effect that I was interested in a law firm in New York but that I did not personally practice law in New York, as the business I had charge of was a manufacturing one in Roanoke Rapids, North Carolina, and that my home, where I lived, was at Cobham, Albemarle County, Virginia. The object of the above visit was to fix the amount of my personal tax in New York. The amount fixed was $2,500 (twenty-five hundred dollars). This took place in 1895 and neither my address nor the amount has been changed.

Moreover no better evidence as to my residence could be asked than is afforded by the sworn testimony of the three Petitioners (my brothers, Messrs. Winthrop A. Chanler, Lewis S. Chanler, and my cousin Mr. A. A. Carey) page 3, lines 141 and 142 of the Commitment Paper, where they declare, "Mr. J. A. Chanler has for several months while at his home in Virginia." This should settle any doubt about my residence. It might be well to state before going any farther the probable causes which led to the said brothers' and cousin's wishing to see me declared insane and confined in an Insane Asylum. You will remember the abusive letter writ-

316 ten me immediately after that Directors' meeting of "The Roanoke Rapids Power Company" in December last, by this same brother, Mr. Winthrop A. Chanler, in which he refused to speak to me, or have anything further to do with me, except by letter or third parties. You will also remember that I accepted his terms and informed him that I would have the books of my Father's Estate, of which he was an executor, examined. You must know that there are two executors of my Father's Estate. One of them is Mr. Winthrop A. Chanler and the other is Mr. Lewis S. Chanler. These two gentlemen, who are equally to blame for what I am compelled to believe is innocent but palpable mismanagement of my Father's Estate, join hands in petitioning for my incarceration in an Insane Asylum before I have the opportunity to investigate their management—but two accountings of the management of the said estate having been rendered in ten years.

Furthermore, as I have told you there has, for years past, been no love lost between my family and myself.

When affection is absent, and business interests are present, it behooves the careful man to look about him and see, in seeking for the solution of an obscure action, whether or not it could have been to the parties' business interest to do an, otherwise, incomprehensibly malicious thing.

The business end of the present situation throws a bright light upon it.

Under my Father's Will I enjoy an eighth of the income of his estate during my life. At my death without issue my said share reverts to his estate. Should I leave issue my said share
317 would go to said issue. It is therefore evidently to the business interest of my family to prevent my marrying by locking me up for life in an Insane Asylum, if possible: and if that is not possible the next best step towards safeguarding their business interests is to throw, if possible, an insurmountable obstacle in the way of my marrying. No more insurmountable obstacle in the way of marriage could be imagined than insanity.

Granting that I get out of this Asylum the stigma of having been confined in it would stick to me through life. You need not necessarily infer that I have any intention of marrying, only I like to retain the privilege of the option.

Furthermore. There is every human probability that were I to be confined in these surroundings long enough my mental and physical forces would succomb to the hideous moral strain and confinement. When this took place my family would be appointed a commission to administer my Estate, I being by that time a bona-fide—instead of what I am at present a bogus—maniac.

I have an Estate which bids fair to be very valuable in time. Certain portions of that Estate are represented by large stock holdings in the "United Industrial Company" and the "Roanoke Rapids Power Company." These said holdings could be sold to third parties with the understanding that they were to be bought back at a certain figure by one or more of my brothers or sisters, who already hold stock in the said Companies and who I know would like to increase their holdings—once the said "Family Commission" for my Estate came into being.

Furthermore. Nothing would be easier than to break my
318 Will on the ground of insanity, now that I have been declared insane, and confined as an insane person in an Insane Asylum. That my family would make every effort to break my Will I make no doubt. For two reasons. First because of their unfriendly attitude towards me for years past. Second because they are in a position to know that I left all of them out of my Will, except one sister, and that—strictly confidentially—my largest legatee is The University of Virginia, for which—on account of its own character and that of Thomas Jefferson—I have a high admiration.

Furthermore. The "United Industrial Company" of which I am the controlling stockholder, and of which I was a Director last December, held its Annual Meeting for the election of officers for the ensuing year, the first week in January last. My brother, Mr. Winthrop A. Chanler, had been elected, by my votes, as President of the said Company the preceding year at a salary of two thousand dollars per annum. After receiving the abusive letter, before alluded to, from him last December, I decided to elect myself President of the United Industrial Company in his place. His said letter to me having specifically stated that he would not speak to me again, or

hold any communication with me except by letter or third parties, had rendered it a business impossibility for me to elect as President of a company a man who was not on speaking terms with myself; who besides being the controlling stockholder was one of the Board of Directors.

I had it delicately conveyed to Mr. Winthrop A. Chanler,
319 by third parties, some days before the election, that it would be as well for him to resign his Presidency of, as well as his Membership on the Board of Directors, of The United Industrial Company. This he promptly did, and at the ensuing election—January/97—I, voting by proxy, for I was at home in Virginia at the time, elected myself President of The United Industrial Company in his place, together with a Board of Directors of my own choosing, to whom I had previously transferred enough stock in the Company to render them eligible under the law, to hold office.

It might be well for you to bear in mind that the above revolutionary and delicate stock manipulation was conceived and carried out by an alleged maniac. For the conception of the plan took place on receipt of Mr. Winthrop A. Chanler's said abusive letter about the middle of December last, and the carrying out occurred in January '97. Whereas, my present attack of alleged insanity began, according to the Commitment Papers, November, 1896.

Mr. Winthrop A. Chanler is heavily interested in The United Industrial Company. The said Company's factory is situated in the town of Roanoke Rapids, North Carolina. He has put fifty thousand dollars into the said Company. Finding himself checkmated, as described, he apparently out of revenge and interest in his stock, set about to get the control of the said Company, and thereby of his said stock, out of my hands. It was a desperate game, but fifty thousand dollars is a large stake. It is necessary for me to make a short digression here in order to give you all the threads of the plot.

320 Mr. Stanford White now comes on the stage again. He had intimated to me last February in New York through a third party that he thought I should take an extended rest from business, and that it would give him great pleasure if I were to make him and Mr. Augustus St. Gaudens—the distinguished sculptor and a friend of mine and Mr. White's most intimate friend—my powers of attorney to transact all my business and look after all my affairs.

Such devotion touched me.

Here was the spectacle of two rich, successful, and eminent men willing to take upon themselves for friendship's sake the work and worry of all my affairs. I thought that there might be something behind their request, but I did not suspect either of them of selfish motives.

I declined the services of Mr. St. Gaudens, but accepted those of Mr. Stanford White. My reason for so doing was that business was extremely dull and I thought if Mr. White wanted to help me run my affairs there would be no harm in letting him do so, I being able to revoke the power of attorney at any time, and being able to supervise his work meanwhile. So I gave him a limited power of

attorney. I also at his request resigned from the Board of Directors of The Roanoke Rapids Power Company to make room for Mr. White on that Board. Mr. Winthrop A. Chanler's presence on said Board would have made the transaction of business difficult owing to his disinclination to talk to me, whereas Mr. Stanford White is one of his closest friends.

I also resigned from the Presidency of the United In-
321 dustrial Company, Mr. Stanford White, thereby becoming a Director of said Company, and one of my previously chosen Directors being elected to fill my place as President.

All this having been arranged I was about to return to Virginia to await the arrival of The McKinley Wave of Prosperity when I was arrested and brought here.

As I said it appears that my brother wished to prevent my making use of the power I have attained in the United Industrial Company by locking me up in an Insane Asylum. He achieved his end.

Lastly. I hold a note of the United Industrial Company for about fourteen thousand dollars. This note is past due. It would greatly embarrass Mr. Winthrop A. Chanler were I to demand its payment. How much has the fear that I would do so had to do with his locking me up? The said amount of the note was advanced by me to the said Company. He owns fifty thousand dollars' worth of the said Company's stock, and others of my immediate family own about twenty-five thousand dollars worth of the same stock. It would pay them to join forces and repay me their pro rata share of my overdue advance to said Company, rather than have said note go to protest and legal proceedings ensue.

Cheapest of all however is to lock me up out of reach of "protest." I think I have given you enough of the business end of this conspiracy for you to see clearly that it was to my brother's, Messrs. Winthrop A. and Lewis S. Chanler's (the co-trustee of my Father's Estate) interest, as well as to that of my whole family, that I should disappear for an indefinite period. Add to their business in-
322 terest the strong personal interest of jealousy and dislike, and you have a powerful working incentive.

As for Mr. A. A. Carey's motive—he is the third Petitioner—for wishing to see me declared, and locked up as, a lunatic that is easy to find. I have had a series, of violent altercations with him, stretching over a period of more than ten years. In fact I may say that he is my oldest, if not my most intelligent enemy. The last row I had with him was in 1894 and I haven't so much as laid eyes on him since.

We can now return to the perusal of the Commitment Papers.

You will remark that the Three Petitioners Messrs. Winthrop A. Chanler, Lewis S. Chanler, and A. A. Carey swear that the acts alleged to have been committed by me in Virginia and in New York are of their own knowledge. For you will note on Page Four of The Commitment Paper line 165 to line 168 "W. A. Chanler Lewis S. Chanler and A. A. Carey being duly sworn, depose and say that they have read the foregoing petition and know the contents thereof, and that the same is true to the knowledge of deponents, except as to

the matters therein stated to be alleged on information and belief." As there are no "matters therein stated to be alleged on information and belief" the matters therein alleged must therefore all be "true to the knowledge of deponents." In swearing that the said matters were "true to the knowledge of deponents" the said deponents Messrs. Winthrop A. Chanler, Lewis S. Chanler, and A. A. Carey thereby perjured themselves, for not one of the said de-
323 ponents has ever crossed the threshold of my "home in Virginia" where part of the alleged acts were sworn by said deponents to have been committed; and not one of the said deponents saw me later in New York, where the remainder of the said alleged acts are sworn by said deponents to have been committed.

One of the said deponents Mr. Lewis S. Chanler was in Europe just prior to the 10th of March, but having sailed from England on a cable's notice reached New York in time to swear on March 10th to alleged acts committed by me while he was abroad and on the Ocean.

The said deponent Mr. A. A. Carey I have not seen since 1894.

The said deponent Mr. Winthrop A. Chanler I have not seen since that Directors' Meeting about the middle of December, 1896.

So much for the veracity of the three Petitioners Messrs. Winthrop A. Chanler, Lewis S. Chanler, and A. A. Carey. Now let us examine that of the two "Medical Examiners In Lunacy" namely Dr. M. Allen Starr (for our friend the Oculist turns out to be an Examiner in Lunacy) and Dr. Eugene Fuller. If you turn to Page Five of the Commitment paper you will see under the caption "Certificate of Lunacy" and on line 200 "Patient resides at Kensington Hotel N. Y. County of N. Y." Now turn to Page Seven of the Commitment Paper and on lines 275, 276 and 279 you will find "That the facts stated and information contained in this certificate are true to the best of my knowledge and belief." Then follow the signatures of M. Allen Starr M. D. and Eugene Fuller M. D. and then line 279 "Severally subscribed and sworn to." Drs. M. Allen Starr,
324 and Eugene Fuller therefore swore that to the best of their knowledge and belief I resided at the Hotel Kensington New York notwithstanding the fact that my said brothers and said cousin the Petitioners swore of their own knowledge that my residence was in Virginia—their words were e. f. lines 141-142 "Mr. J. A. Chanler has for several months while at his home in Virginia"—and also notwithstanding the fact that Dr. Eugene Fuller found me at my "home in Virginia" when he presented himself there in company with Mr. Stanford White last February; and Dr. M. Allen Starr was aware of the said visit on the part of Dr. Fuller to my "home in Virginia," said visit having been touched on before Dr. Starr in my presence. There could therefore have been no possible doubt in either Dr. Fuller's or Dr. Starr's mind about my residence being in Virginia. On top of their own knowledge, as above described, and on top of the corroboration of it in Trow's Directory (which they probably consulted for—touching my occupation—they say on line 202 "occupation lawyer") which gives my residence Virginia—on top of and in spite of all this both Dr. M. Allen Starr and Dr. Eugene

Fuller swear that to the best of their knowledge and belief I reside at the Hotel Kensington. This looks to me like perjury. How does it strike you? At all events it is so remarkable a divergence, as sworn testimony, from the sworn testimony, on the same subject, on the part of the said Petitioners that it badly needs investigation.

The remainder of the statements in the Commitment Paper, both on the part of the said Petitioners, and on that of the said
325 Medical Examiners in Lunacy is on a par with the above instances of false swearing.

On the maxim "false in one thing false in all" unnecessary for me to take up your time to deny the false allegations on the part of the said Petitioners and on that of the said Medical Examiners in Lunacy as they "drag their slow length along." I shall content myself in making a general denial to all allegations which go to show me of unsound mind.

Such trifling allegations as that I have limited myself to a peculiar diet, or that I have secluded myself, or that I burnt my hand (in an experiment by the way) I demur to. I also demur to the allegation that I frequently went into a "trance-like state." This was done in the presence of Drs. Starr and Fuller and at their request in order that they might note the action of a "trance-like state." Their request to me was based on purely scientific grounds, and I granted it on the same grounds. There was never any question of medical advice. Drs. Fuller and Starr each pretended interest in "trance-like states" and Dr. Starr pretended to some knowledge on the subject.

You will remember that I said that I had for some years been carrying on investigations in Esoteric Buddhism. The said "trance-like state" is one of the means I from time to time employ to that end. As I said before I am not going to bore you with a lecture on Esoteric Buddhism, and shall drop the subject with the remark that I have neither injured myself nor anybody else by my said investigations.

To all allegations to the effect, or tending thereto in the
326 remotest degree, that I have a delusion or delusions of any kind or description I make an unequivocal denial.

The allegations that I have exposed myself to cold, neglected or injured myself, I unequivocally deny.

The allegation that I threaten people I unequivocally deny.

The allegation that I was emaciating I unequivocally deny.

The allegation that I was confined (in an institution for the Insane) in Neuilly, Paris, France, I unequivocally deny. "New Paris" is a remarkably ignorant clerical error. I unequivocally deny each of the following allegations, which for brevity I shall designate by the numbered line they fall on. Namely, Line 142 from the word "been" to "manner." Line 144 from "he has" to the end of 150 inclusive. Line 187 to line 191 inclusive. Line 205 to line 212 inclusive. Line 215 and line 216 with the exception of "is armed" which has been stretched to distort the very natural fact that I had a revolver in my room, which I always travel with. Line 218 and line 219. Line 244 to line 249 inclusive, except that I maintain

that my eyes have changed from brown to gray. Line 252, line 261 inclusive, except that I frequently went into a "trance-like state" at the request of Drs. Starr and Fuller, and that I sometimes talked French when in the trance-like state. Line 262 to line 264 inclusive. Line 269, line 270, line 271. Line 273 and line 274. The "valet" in question denied to me in this cell the foregoing, in the following inelegant but explicit language, to wit, "I didn't
327 describe no 'gradual development' of no 'delusions' for I didn't see none." I demur to line 272 which says, "he has become suspicious of his friends, has secluded himself" on the ground that I showed keen instinct in suspecting my friends. My "friends"—so-called—family and "friends" ran me in here. Had I been more suspicious of "friends" I should not be in the hole I occupy at present.

I think that you will agree with me that the frequently recurring word "line" in the foregoing paragraphs should read "lie."

So much for the allegations of the said Petitioners and said Medical Examiners In Lunacy against my reason. Now, let us see how far the allegations of the Honorable Henry A. Gildersleeve, Justice of the Supreme Court of the State of New York, that I am a maniac with suicidal as well as homicidal tendencies—the only conclusion to be drawn from his allegations—remember the said Honorable Justice has never laid eyes on me—line 187 to line 191 inclusive, and line 345 and line 346—let us see how far said allegations have been borne out by the facts which have transpired since my arrest March 13th.

I made no resistance to the police who arrested me at the Hotel Kensington and brought me here. I gave them cigars and we smoked and chatted amicably together on the way here.

During the four months that I have been imprisoned here I have not committed a single act which in the remotest degree resembled either violence or insanity. I have threatened nobody during that time. I have frequently warned the authorities here that I would seek legal redress for the false imprisonment that I was under-
328 going, and that I shall hold them legally responsible for their share in it.

The above statement is borne out by each of my keepers—one is on duty when the other is off duty—one of whom has been eleven years a keeper in Insane Asylums, and the other has been three years in this Institution. Their duty is to sleep in my cell, and be with me and watch me when I am awake, and report daily to the authorities here all that I do or say of any nature whatever. These reports are taken down in writing by the authorities and are "charts." It is on these "charts" that the progress or retrogression of a "patient's" condition is based. The authorities—the doctors i. e.—may see the "patient" for five or ten minutes each day, the keeper sees the patient 15 hours out of the 24. It is in fact the keepers, who are expert trained nurses, and not the doctors who understand most about the character, habits, and mind of the patient, in the ratio of 15 hours to 10 minutes per days of diagnosis and atten-

tion. Neither of my keepers has ever seen me do nor heard me say anything which was in the least irrational or unbalanced. Each of them consider me as sane as any man, and they are willing to so testify.

Why do the doctors here not discharge me as sane? Why did they not discharge me as sane after a week or two of observation? Because the duty of the doctors in the pay of this Private Insane Asylum appears to be to hold anybody placed here, whether sane or otherwise, long enough for the owners of this Asylum to make a good profit out of him—or her. Times are hard. It is not every day in the week that the Proprietors of this Asylum can capture a
329 prisoner who can be made to pay one hundred dollars a week ransom until released. As you see by the statement on the cover of the commitment paper, that is the exhorbitant sum I am forced to pay, in exchange for, a two room cell, a keeper—whose salary is not over thirty dollars a month with board and lodging—and baked potatoes. There is no reduction here; I am forced to pay for what I don't want, whether I reject it or otherwise. You can readily grasp the threads of this daring conspiracy, from your intimate knowledge of the ways of criminals, gathered from your long and successful pursuit of them as Commonwealth's Attorney.

It is not necessary therefore for me to point them out to you.

Let it suffice to say that the ground-work of the Commitment Papers is an amalgam of avarice, malice, and mendacity.

That the only truthful statements in the Commitment Paper are such as in nowise reflect on my reason or sanity. That I was accused by persons who were not in a position to know whereof they—not merely spoke but—duly swore. That these said accusers—the said Petitioners—were all and severally on bad terms with me, and had been so for years. That it was to the unmistakeable business interests of two of the said accusers Messrs. Winthrop A. Chanler and Lewis S. Chanler that I should be disfranchised, as an insane person, of my property as well as of my liberty.

That it was to the equally unmistakeable spite and malice of the third said accuser Mr. A. A. Carey that I should end, after years of every description of violent altercation with and opposition
330 to me, in a mad house. That having had a sharp altercation with Dr. Eugene Fuller for bringing Dr. M. Allen Starr into my rooms without warning or permission—to spy on me in company with himself as the result proved—which altercation was the basis for a second one with Dr. M. Allen Starr on the general topic of the morality of the medical profession: in the discussion of which topic I showed such unexpected knowledge of the habits of many members of the medical profession that Dr. Starr after vainly endeavoring to discover the source of my information, earnestly requested me to change the subject: that having had as I say, a distinct altercation with each of the said doctors—who later were metamorphosed into the said Medical Examiners In Lunacy—the motive of the said followers of the Healing Art, in wishing to see their late antagonist declared a maniac, is not far to seek. I might add that I have not the faintest tinge of prejudice against Surgeons as well as such Physi-

cians as are skilful and honest: that there are numbers of Physicians who are neither one nor the other, it has been my Fortune to discover. The proof of the above lack of prejudice against physicians is that I have spent money in giving aid to deserving medical students to complete their education.

The motive which led the Honorable Henry A. Gildersleeve, Justice of The Supreme Court of The State of New York to overlook the grave discrepancy displayed in the Commitment Paper in the spectacle afforded by two conflicting sworn statements on the same subject—namely the sworn statement of the said Petitioner as to my home being in Virginia, followed by the sworn statement of
331 the said Medical Examiners in Lunacy as to my home being in Hotel Kensington New York—the motive which led the Honorable Justice to permit the said spectacle to pass unchallenged I shall leave you to surmise. This Institution is very rich. The motive which led the said Honorable Justice to dispense with "Personal Service" on a mere ex parte statement I shall leave you to surmise. The motive which led the said Honorable Justice to omit to direct "Substituted Service"—clearly the alternative, when "Personal Service" is dispensed with as implied by the Law which reads "The Judge to whom the application (for commitment to an Insane Asylum) is to be made may dispense with such personal service, or may direct substituted service to be made upon some person to be designated by him" c. f. printed cover of Commitment Paper, containing said law, lines 53 to 55—the motive which led the said Honorable Justice to the above omission I shall leave you to surmise.

You will note, on studying the extracts from chapter 545 of The Laws of 1896—given on the cover of the Commitment Paper—the tortuousness thereof. For instance take section 62. This said section contradicts itself. It says—line 49 and line 50—"Notice of such application (for commitment to an Insane Asylum) shall be served personally at least one day before making such application upon the person alleged to be insane."

That is no more than fair—is it? Somebody takes it into his—or her—head: or for certain reasons, pretends to take the notion into his—or her—head that you are crazy. It seems fair that you
332 should be allowed to confront your accuser—a common murderer has that privilege—and be heard in defence *to* his—or her—allegations, before being summarily arrested, like a malefactor as I have been, and put behind bars without a trial, for an indefinite period, perchance for life. Well the above wholesome specimen of boasted Anglo-Saxon Justice, Law, Freedom, etc., is at once wiped out and rendered utterly nugatory by what follows on lines 53 to 55 inclusive. After the above bold bluff at Justice—after saying "Notice of such application (for commitment to an Insane Asylum) shall be served personally at least one day before making such application upon the person alleged to be insane" the Law dodges Justice and sneaks out at the following carefully prepared loophole (line 53 to line 55 inclusive) "The Judge to whom the (said) application is to be made may dispense with such personal service, or may direct substituted service to be made upon some person to be designated by

him." The Judge has it all his own way. Get at the right Judge and it's plain sailing. There are two explanations of the above Law. One that it is the outcome of "Manipulated Legislation" at Albany by Corporations dealing in Bogus Maniacs, who wish to legislate in order to continue the said Monopoly In Maniacs, which the Laws of the State of New York at present foster and support.

The other explanation for the above iniquitous law's smirching the Statute Books of the Empire State is that it is a product of the late Republican Legislature.

In other words a citizen of the State of New York can be
333 condemned and imprisoned without a hearing. All that is required to deprive a citizen of The Empire State of his liberty is one or two false witnesses, two dishonest doctors, and a Judge who will swallow conflicting sworn statements -ithout a qualm.

No defence is allowed the accused. It is truly an Empire State. I sometimes wonder, as I look through the bars of my cell, how such things can be outside the Russian Empire State. Fortunately for myself however I am no longer a citizen of The Empire State but am and have been since 1895 a citizen of the Sovereign State of Virginia; which title to Sovereignty I expect to see Virginia make good by protecting her citizen, recapturing him, as it were, from the neighboring and supposedly friendly State of New York, by invoking the arm of the Federal Courts.

An interesting example this showing how the theory of States Rights can be shown to rest for support on Centralization.

How one Sovereign State can be prevented from stealing the citizen of another Sovereign State, and thereby the money accruing from his personal taxes, by the robbed State's applying to the Common Residuary of all extraneous Sovereign Rights—the Central Government—to demand restitution from the robber State.

So much for the equity surrounding my present predicament.

Now let us glance at the law. You will readily comprehend with what meagre means toward forming an opinion I am at present surrounded.

The sum total of my law library consists of The Constitution of the United States, in the back of a Dictionary, and selections from
334 a list of Legal Maxims in the same book. The Constitution of the United States says Article III Section 2. "The Judicial Power (of the Federal Courts) shall extend to Controversies between a State and citizens of another State; to Controversies between citizens of different States" I am a citizen of Virginia.

Should I have a Controversy with the State of New York, the controversy being between a State and a citizen of another State, the Federal Courts could alone have jurisdiction over the controversy.

The question of a man's Sanity, covering as it does his Liberty, and his property, is surely a controversy of the first importance.

I therefore—having had my sanity attacked by a State Court (The Supreme Court of the State of New York) have a controversy with the State of New York. Said controversy must be tried therefore in the Federal Courts. Furthermore, I have had my sanity attacked by Doctors M. Allen Starr, and Eugene Fuller. They

being citizens of the State of New York, and I being a citizen of Virginia said controversy must be tried therefore in the Federal Courts.

Furthermore, I have had my sanity attacked by Messrs. Winthrop A. Chanler, Lewis S. Chanler, and A. A. Carey. I being a citizen of the State of Virginia, and they, the Messrs. Chanler, being citizens of the State of New York, and Mr. Carey being a citizen of the State of Massachusetts, said controversy must be tried in the Federal Courts. Furthermore, I have been restrained of my liberty by "The Society Of The New York Hospital" the legal title of the Corporation which owns the Asylum in which I am at present confined. The said Corporation being a New York affair, and
335 I being a citizen of Virginia, said controversy must be tried therefore in the Federal Courts. The above actions are for the Future. For the present all I ask is liberty. It is not necessary for me to tell you how to proceed to obtain that end. I will only caution you, in closing, not to write, or telegraph me, or to mention to a living soul save Senator Daniel (to whom of course you will show this letter) anything connected with me or my whereabouts. It has been given out by certain interested parties that I am in Europe (I find that that is the stock term used when a man is sent here) let it be so considered as long as possible. Speed is essential. For I have been given to understand that when my unknown term of imprisonment here is ended I am to be shipped to Europe. As to what point I was not informed, most probably to an English Private Insane Asylum. That would probably do the business for me, as there they are even more brutal in their treatment of "patients" than here.

Above all I warn you and Senator Daniel to be on your guard against all the doctors here. They are as smooth spoken and deceptive in their manner as any confidence men you ever encountered.

The name of the Superintendent is Dr. S. B. Lyon. The Asylum is commonly called "Bloomingdale" but that is merely a fancy name. Its legal title is, "The Society Of The New York Hospital," a private corporation having its offices and Hospital on 15th Street, a few doors West of Fifth Avenue, New York.

As you may gather from my letter I mean war.

No compromise with any man, Institution, or State, which
336 has been in the remotest degree connnected with this rascally conspiracy. Listen to nobody who endorses what has been done.

The more friendship such a man professes for me, the more profound should be your distrust of him. The manner of proceeding to procure the writ of Habeas Corpus I leave entirely in Senator Daniel's and your, hands.

Speed and Secrecy are the Watchwords. The moment it leaked out that any effort was being made for my release that moment would probably end my imprisonment here, and begin it in a closed carriage on my way by night, bound and gagged to Long Island Sound—8 miles off—where a private tug boat could convey me to an Ocean Steamer at New York, or a sailing vessel bound 'round "The Horn." I can assure you that outlawed as I am my position is one of considerable uncertainty—not to say danger. It

is unnecessary for me to say that nothing but the most unexpected and dire necessity could induce me to go before a "Sheriff's Jury," the usual manner, in the State of New York, of carrying out a Habeas Cropus Proceedings for a man who has been declared insane by a Judge. I object to this for three reasons. First, because it is not the right way to go about it. I am not a citizen of the State of New York, and therefore the "Sheriff's Jury" does not apply to my case.

Second, because I do not desire the notoriety consequent upon such a proceeding.

Third, because my family are most anxious that I should go before a "Sheriff's Jury" in the desperate hope that the said jury would believe what they, and the doctors, said about me. In
337 which case the Jury would pronounce me insane, and hand me over to the custody of my family, who could then apply for and receive into their hands my property and the management thereof—under the name of a Commission.

The above line of action (going before The Sheriff's Jury) has already been suggested to me by an emissary of my family, who told me that that was the only way for me to get out—hoping thereby that I would choose it. The best way, it seems to me, would be to have Senator Daniel, and yourself, go before the Attorney General in Washington, and have him issue an order to the United States District Attorney in New York City, to go before a Federal Judge in New York City with Senator Daniel and yourself, and procure from said Federal Judge a Writ of Habeas Corpus, on the double ground that I am not insane—show portions of this letter to the Judge as proof of my sanity, on the Maxim "To write is to act" if I write sanely I act sanely—and that if I were insane the action should have been begun in a Federal, and not in a State Court, owing to my being a citizen of Virginia, and not of New York, and that my commitment by a State Court is therefore illegal and must be set aside.

I merely mentioned this with the full knowledge of its being—owing to the circumstances—a "horseback opinion." I don't dwell on the irregularity of the commitment—the conflicting sworn statements—the suggestions of fraud—the fact that the name of the Institution in which I am is therein given as "Bloomingdale
338 Asylum" whereas the Commitment Paper distinctly states directly under it on line 156, "It is essential that the official title of the institution should be correctly inserted" and whereas the official title of said institution is not "Bloomingdale Asylum" but "The Society Of The New York Hospital." The same irregularity is repeated on the cover of The Commitment Paper, where the title of the said institution is again given as "Bloomingdale."

These, with the rest of the legal aspects of the case I leave entirely in Senator Daniel's, and your experienced, hands. If necessary, let a Federal Judge examine into my Sanity for a change.

Examination at the hands of a distinguished and honest man is the last thing that I would avoid.

If necessary, let us begin de novo, only in a legal, equitable, and

honest manner. No more medical spies, no more Star Chamber Judges, no more summary arrests.

We are not in Cuba nor, as yet, in the State of New York does Martial Law prevail.

As I am allowed no money—I haven't seen a dollar bill in months—and as I am not allowed to communicate with my New York office, I am unable to send you and Senator Daniel cheques for retainers and disbursements. So I must ask you to explain the situation to the Senator, and tell him that I must ask him to charge all travelling expenses and disbursements to my account until I am liberated.

The same I request of you.

Hoping to see you and the Senator enter my cell, before
339 many days, with an officer bearing a Writ of Habeas Corpus from a Federal Court,

Faithfully yours,

JOHN ARMSTRONG CHANLER.

P. S.—Please bring this letter with you as a résumé of my case.

J. A. C.

340 *Judgment.*

United States District Court, Southern District of New York.

Law. 60-81.

JOHN ARMSTRONG CHALONER, Plaintiff,
against
THOMAS T. SHERMAN, Defendant.

The issues in this action having been brought on for trial before the Hon. George C. Holt, District Judge, and a jury at a Trial Term of this Court held on the 19th, 20th, 21st and 23rd days of February, 1912, at the Court Rooms thereof in the Federal Building in the Borough of Manhattan, in The City and County of New York, in the State of New York, and the allegations and proofs on the part of the plaintiff having been heard and considered, and the Court having, on motion of the defendant at the close of the case, directed a verdict in favor of the defendant, and the jury having duly found and rendered a verdict in favor of the defendants accordingly.

Now on motion of Evarts, Choate & Sherman, attorneys for the said defendant, it is

Adjudged that the defendant Thomas T. Sherman have judgment against the plaintiff John Armstrong Chanler upon the issues in this action.

Judgment signed and entered this 6th day of March, 1912.

THOS. A. ALEXANDER, *Clerk.*

341 *Assignment of Errors.*

United States District Court for the Southern District of New York.

JOHN ARMSTRONG CHALONER, Plaintiff-in-Error (Plaintiff Below),
against
THOMAS T. SHERMAN (Defendant Below).

Assignment of Errors of the Plaintiff-in-Error, John Armstrong Chaloner.

And now comes the plaintiff-in-error, John Armstrong Chaloner herein, by William D. Reed, his attorney, and respectfully submits and presents and files its assignment of errors complained of and says:

That in the records and proceedings of the Honorable Court in the above entitled cause, on the trial thereof, there is manifest error to the injury and prejudice of the said plaintiff-in-error, John Armstrong Chaloner, and for such error the said plaintiff-in-error assigns the following:

First. That the learned United States District Court, for the Southern District of New York, erred in sustaining the objection of counsel for defendant-in-error, Thomas T. Sherman, to the following question read from the deposition of Amelie Rives Troubetzkoy and put to the said witness by counsel for plaintiff-in-error:

Q. What was the condition of the plaintiff's health during his marriage to you?

342 To which ruling of the learned Court counsel for plaintiff-in-error duly excepted.

Second. That the said Court erred in ruling that the matter of the plaintiff's commitment had nothing to do with the case, and to which ruling of the learned Court counsel for the plaintiff-in-error duly excepted.

Third. That the said Court erred in sustaining the objections of counsel for defendant-in-error, Thomas T. Sherman to the following questions read from the deposition of Amelie Rives Troubetzkoy and put to said witness by counsel for plaintiff-in-error.

Q. Please state what, if any, sickness he had during that period?

Q. What was the condition of his health generally?

To which rulings of the learned Court counsel for plaintiff-in-error duly excepted.

Fourth. That the said Court erred in sustaining the objection of counsel for the defendant-in-error, Thomas T. Sherman, to the admission in evidence on the part of the plaintiff-in-error of a certified copy of the 1897 lunacy proceedings.

To which ruling of the learned Court counsel for the plaintiff-in-error duly excepted.

Fifth. That the said Court erred in sustaining the objections of counsel for defendant-in-error, Thomas T. Sherman, to the follow-

ing questions read from the deposition of Amelie Rives Troubetzkoy and put to the said witness by counsel for plaintiff-in-error.

Q. In the certificate, commencing at line 205, it is stated
343 that there was one previous attack, presumably referring to lunacy, do you know anything about this charge?

Q. In these proceedings, under the statement of facts alleged against the plaintiff, were the following: 1st. That "Mr. J. A. Chanler has for several months while at his home in Virginia been acting in a very erratic manner"—this refers to his conduct presumably for the several months preceding the trial in New York in 1897? Please state whether or not you have any information concerning this allegation?

Q. It is then alleged in this petition in these proceedings that he had limited himself to a peculiar diet—during the period that you knew him and were married to him, please state what, if anything, was peculiar about his diet?

Q. During that period the chief or only peculiarity about his diet was the fact that he was a vegetarian?

Q. It is then alleged that "he gives as a reason for these and other acts that he is inspired by a spirit which directs him;" what do you know of this allegation?

Q. Have you any reason for saying that you can't think of him as having said that?

Q. Did he ever do anything to suggest to you that he had delusions?

Q. Will you please state what was his general temperament—excitable or otherwise?

Q. Is he any more excitable or high strung than the others?

Q. Have you ever heard any rumors that affected his sanity?

Q. It is next alleged that he was confined at Neuilly, near
344 Paris, France, some years ago, for a short time, please state whether or not this is true?

Q. Will you explain what, if anything, could have been a basis for this charge?

Q. Then you state that he was only at Neuilly once and that time to see a friend?

Q. Was he or not, a very energetic man?

Q. In this certificate of lunacy they state that he was excited, armed, threatens people, is dangerous; during the period that you knew him did he or not ever do anything to indicate that he was dangerous?

To which rulings of the learned Court counsel for plaintiff-in-error duly excepted.

Sixth. The learned Court erred in ruling that "it has nothing to do with the case whatever;" that she (Amelie Rives Troubetzkoy) was with him at that time and knows all the facts and circumstances and that that is a false statement in the papers that committed him, that "he was confined at Neuilly, near Paris, France, some years ago for a short time."

To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

Seventh. That the said Court erred in sustaining the objections of counsel for the defendant-in-error, Thomas T. Sherman, to the following questions put by counsel for the plaintiff-in-error, to the witness Pedro N. Piedra.

Q. Was Mr. John Armstrong Chaloner at any time when you were there serving in that capacity with him, an insane person?

Q. Have you attended upon other insane men?

345 Q. How many of them?

Q. What was his physical condition at that time?

Q. Did you have any conversation with the doctor in charge?

Q. About the condition of Mr. Chaloner?

Q. Did you have any conversation with the doctor in charge over there about Mr. Chaloner being heard or examined anywhere?

Q. Did you observe his actions?

To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

Eighth. That the said Court erred in sustaining the objection of counsel for the defendant-in-error Thomas T. Sherman, to the admission of any evidence by the witness Pedro N. Piedra concerning any physical or mental condition of Mr. John Armstrong Chaloner at or about the time of his confinement at Bloomingdale Asylum in May, 1899.

To which ruling of the learned Court, counsel for plaintiff-in-error duly excepted.

Ninth. That said Court erred in ruling that the sanity of the plaintiff-in-error after the New York orders were made was not in issue.

To which ruling of the learned Court, the counsel for plaintiff-in-error duly excepted.

Tenth. That the said Court erred in sustaining the objection of counsel for the defendant-in-error, Thomas T. Sherman, to the admission in evidence on the part of the plaintiff-in-error, of a certain exemplified copy of the record of proceedings in the State of Virginia, entitled, "In the Matter of John Armstrong Chanler,"

346 and referred to in the evidence as "The Virginia Decree of Sanity."

To which rulings of the learned Court, counsel for the plaintiff-in error duly excepted.

Eleventh. The learned Court erred in sustaining the objection of counsel for the defendant-in-error, Thomas T. Sherman, to the admission of the order, that is the decree, of the Virginia Court as to the sanity of the plaintiff-in-error, offered by counsel for the plaintiff-in-error.

To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

Twelfth. The learned Court erred in ruling that "the question of whether he is sane or insane now, or has been at any time in the past, is an abstract question and entirely immaterial to this case."

To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

Thirteenth. The said Court erred in ruling "that the Supreme

Court of New York State is the only Court that can supersede the inquisition and restore the money and property to Mr. Chaloner."

To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

Fourteenth. The said Court erred in holding that as a matter of law, that if the plaintiff, John Armstrong Chaloner, was in fact in the City of New York, when the proceeding for the appointment of a committee was begun, the Supreme Court had jurisdiction whether he resided there or did not reside there.

347 To which ruling of the learned Court the counsel for the plaintiff-in-error duly excepted.

Fifteenth. The said Court erred in holding as a matter of law that "It is not necessary to discuss it ('that he was lured into the State for the purpose of being thrown into Bloomingdale'), Mr. Sherman is not responsible for the acts of those who put him in Bloomingdale."

To which ruling of the learned Court the counsel for plaintiff-in-error duly excepted.

Sixteenth. That the said Court erred in holding as a matter of law that it is immaterial whether or not the plaintiff was lured into the jurisdiction of the State of New York for the purpose of taking commitment proceedings against him and in holding that thereupon a proper proceeding was begun in the Supreme Court, which resulted in a judgment that the plaintiff is insane, and in holding that that judgment is perfectly valid, no matter how the plaintiff, John Armstrong Chaloner, was brought into the jurisdiction of the Court.

To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

Seventeenth. That the learned Court erred in holding as a matter of law that the judgment rendered in the 1899 proceedings determined the status of the plaintiff, John Armstrong Chaloner and determined the condition of the plaintiff's sanity or insanity, and that such determination is a fact which does not depend on how the plaintiff was brought within the reach of the Court, as determining the question of sanity or insanity.

348 To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

Eighteenth. That the learned Court erred in holding as a matter of law that no matter how John Armstrong Chaloner the plaintiff, came to any particular place or how he was brought or by what fraudulent means he was brought there, if it was claimed that he was insane or had lost his reason, that the Court had jurisdiction over his person and property.

To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

Nineteenth. The learned Court erred in excluding any and all evidence offered or to be offered tending to show the sanity of the plaintiff, and any and all evidence offered or to be offered tending to show that the plaintiff was lured into New York State.

To which ruling of the learned Court, counsel for the plaintiff-in-error excepted.

Twentieth. The learned Court erred in ruling as a matter of law that "The question that he was a resident of another state, so far as the validity of the proceedings to have him adjudicated a lunatic is concerned, is in my opinion, entirely immaterial."

To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

Twenty-first. The learned Court erred in excluding all the evidence offered to show that John Armstrong Chaloner was not at the time of his commitment to Bloomingdale, a resident of New York State.

349 To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

Twenty-second. The learned Court erred in excluding the offer of counsel for the plaintiff-in-error to show that the whole proceeding, which embodied both records, the 1899 proceeding, is void on its face, for twenty "odd other reasons, which involved due process of law."

To which rulings of the learned Court, counsel for the plaintiff-in-error duly excepted.

Twenty-third. The learned Court erred in excluding all the evidence to show that all the proceedings against the plaintiff-in-error, were by virtue of fraud and conspiracy.

To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

Twenty-fourth. The learned Court erred in sustaining the objection of counsel for the defendant-in-error to the following questions read from the deposition of John B. Dickinson, M. D., and put to the witness by counsel for the plaintiff-in-error:

Q. Please state what is the present color of the plaintiff's eyes?

To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

Twenty-fifth. The learned Court erred in excluding evidence to show that the evidence of the alienists upon which the plaintiff-in-error was committed, was false and perjurous and fraudulent, bearing upon the bona fides, and that it deceived and misled the Court, and in ruling that said evidence should have been given on

350 the trial of the case (meaning on the trial of the New York State proceedings).

To which rulings of the learned Court, counsel for the plaintiff-in-error duly excepted.

Twenty-sixth. The learned Court erred in ruling that the Court could not try over, there, the question which was tried before the Sheriff's jury.

To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

Twenty-seventh. The learned Court erred in excluding the testimony of Winthrop Astor Chanler, taken by the defense in this case, tending to show fraud in the commitment of the plaintiff-in-error, and tending to show that the plaintiff-in-error was lured into the jurisdiction of the State of New York.

To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

Twenty-eighth. The learned Court erred in sustaining the objection of counsel for defendant-in-error, to the following question read from the deposition of Winthrop Astor Chanler, and put to said witness by counsel for the plaintiff-in-error:

Q. How long is it that you have been estranged?

To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

Twenty-ninth. The learned Court erred in sustaining the objection of the counsel for the defendant-in-error, to the following question read from the deposition of Winthrop Astor Chanler, and put to said witness by the counsel for the plaintiff-in-error:

351 Q. You have had quarrels with your brother, haven't you?

To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

Thirtieth. The learned Court erred in sustaining the objections of counsel for the defendant-in-error to the following questions read from the deposition of Winthrop Astor Chanler and put to said witness by counsel for the plaintiff-in-error:

Q. Was there an altercation between you at that meeting at which he kicked you out as you say?

Q. Well, wasn't there some quarrel between you with reference to a suggestion that the plaintiff made about an examination of the books of your father's estate?

Q. And that was about the time of this meeting?

Q. Well, now, will you tell us what you remember of that?

Q. Lewis is the other petitioner (Lewis Stuyvesant Chanler)?

Q. Wasn't there really a good deal of ill feeling between all the members of your family, on the one hand, and John Armstrong Chanler, on the other hand, ever since his marriage?

Q. Wasn't there considerable complaint among your brothers and sisters that they were not invited to his wedding?

Q. Well, how many of you felt that way?

Q. Then, you owe your presidency to the votes given by Mr. Sherman as committee?

Q. Did he tell you what he raised this money for?

352 Q. Well, did you criticise his raising money to buy out your bother Robert?

Q. Under those circumstances, why didn't you send Lewis Chanler down there to investigate your brother's condition of health instead of going there yourself—wasn't Lewis more friendly to him than you?

Q. So that Mr. Carey had not seen your brother for at least two years prior to the time of the commitment?

Q. Now, why I ask you that, is because you probably remember that in your application for your brother's commitment you and Mr. Lewis Chanler and Mr. Cary signed a petition in which you state that "Mr. John Chanler has for several months, while at his home in Virginia, been acting in a very erratic manner." He has limited

himself to a peculiar diet; has burned his hands by carrying hot coals in them; he has devised many peculiar schemes, such as a roulette scheme to beat Monte Carlo, and he has given as a reason of these and other acts that he is inspired by a spirit which directs him; for the past three weeks entirely he has constantly talked of these delusions; has neglected his health; has injured his person and has been at times wildly excited, and then, all three of you sign an affidavit stating that you knew the contents of the foregoing petition, and that the same was true of your own knowledge, except as to matters therein stated to be alleged on information and belief, and there are no matters in the petition, which are stated on information and belief; now, how did you come to make that affidavit that you made these facts of your own knowledge?

353 Q. And that the statements contained in this petition were very solemn statements?

Q. And that you considered very carefully this statement didn't you, Mr. J. A. Chanler has for several months while at his home in Virginia, been acting in a very erratic manner?

Q. And you know what home means?

To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

Thirty-first. The learned Court erred in excluding the offer of counsel for the plaintiff-in-error to put the whole deposition of Winthrop Astor Chanler in evidence.

To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

Thirty-second. The learned Court erred in excluding evidence to prove lack of jurisdiction, conspiracy, fraud, want of due process of law, and to prove the sanity and competency of the plaintiff-in-error; and to prove that he was lured into the State of New York; and to prove that the plaintiff-in-error was unable through physical disability to attend the 1899 proceedings; that said proceedings were had in absentia, that there was no real contest and that there was fraud.

To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

Thirty-third. The learned Court erred in sustaining the objection of counsel for defendant-in-error, to the offer made by counsel for plaintiff-in-error, of the letter from John Armstrong Chaloner to Hon. Micajah Woods, dated July 3rd, 1897.

To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

354 Thirty-fourth. That the said Court erred in sustaining the objection of counsel for defendant-in-error to the following question read from the deposition of John Armstrong Chaloner and put to said witness by counsel for plaintiff-in-error.

Q. Was the work of building up the Town of Roanoke Rapids completed under your supervision in 1896?

To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

Thirty-fifth. That the said Court erred in sustaining the objection

counsel for the defendant-in-error, and in striking out the answer hereto; read from the deposition of John Armstrong Chaloner and ut to said witness by counsel for plaintiff-in-error.

Q. What was the amount of your investment?

A. The amount was actually in cash $13,000.00, the balance hich was on interest was $12,000.00, the interest being $720 a ear.

To which ruling of the learned Court, counsel for the plaintiff-n-error duly excepted.

Thirty-sixth. That the said Court erred in holding as a matter f law that the defendant, Thomas T. Sherman, is not responsible or the acts of those who put the plaintiff, John Armstrong Chaloner n the Bloomingdale Asylum, nor in any way accountable therefor.

To which ruling of the learned Court, counsel for plaintiff-in-error duly excepted.

Thirty-seventh. That the learned Court erred in holding as a matter of law that testimony going to prove that John Armstrong
355 Chaloner was not at the time of his commitment to Bloomingdale Asylum a resident of the State of New York so far as the validity of proceedings to adjudicate him a lunatic was concerned is immaterial; and that the Court erred in sustaining the objections of counsel for the defendant-in-error to the admission of evidence on the part of the plaintiff-in-error of all testimony as to the residence of the plaintiff-in-error in another State at the time of his commitment to Bloomingdale Asylum.

To which rulings of the learned Court counsel for plaintiff-in-error duly excepted.

Thirty-eighth. That the learned Court erred in directing a verdict for the defendant-in-error upon the trial herein, and to which ruling the plaintiff-in-error excepted.

Dated, New York, July 3rd, 1912.

WILLIAM D. REED,
Attorney for Plaintiff-in-Error.

47 Cedar Street, New York City, N. Y.

356 *Order Allowing Writ of Error and Fixing Bond.*

At a Term of the United States District Court for the Southern District of New York, Second Circuit, Held at the Post Office Building, in said District, in the Borough of Manhattan, on the — Day of April, 1912.

Present: Hon. Learned Hand, Judge of the United States District Court.

JOHN ARMSTRONG CHALONER, Plaintiff,
against
THOMAS T. SHERMAN, Defendant.

This 5th day of July, 1912, came the plaintiff John Armstrong Chaloner, by his attorney, William D. Reed, Esq., and filed herein

and presented to the Court his petition praying for the allowance of a writ of error and assignment of errors intended to be urged by him, praying also that a transcript of the records and proceedings, and papers upon which the judgment herein was rendered duly authenticated, may be sent to the United States Circuit Court of Appeals for the Second Judicial Circuit, that such other and further proceedings may be had as may be proper in the premises

On consideration whereof the Court does allow the writ of error and upon the annexed stipulation of the attorneys for the
357 respective parties hereto, dated May 14, 1912, the filing of a bond is hereby expressly waived and it is accordingly

Ordered that a writ of error be and hereby is allowed to have reviewed in the United States Circuit Court of Appeals for the Second Circuit the judgment heretofore entered herein on March 6th, 1912, and it is

Further ordered that all further proceedings be superseded and stayed until the final determination of said writ of error by the said United States Circuit Court of Appeals for the Second Circuit, and until the further order of this Court.

LEARNED HAND, *D. J.*

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Judge of the District Court of the United States for the Southern District of New York, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the District Court, before you, or some of you, between John Armstrong Chaloner, plaintiff against Thomas T. Sherman, defendant, a manifest error hath happened, to the great damage of the said John Armstrong Chaloner, as is said and appears by his complaint, we, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then
358 under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Judges of the United States Circuit Court of Appeals for the Second Circuit, at the City of New York, together with this writ, so that you have the same at the said place, before the Judges aforesaid, on the 3rd day of August, 1912, that the record and proceedings aforesaid being inspected, the said Judges of the United States Circuit Court of Appeals for the Second Circuit, may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness, the Honorable George C. Holt, Senior Judge of the District Court of the United States, Southern District of New York, this 5th day of July in the year of our Lord one thousand nine

ndred and twelve and of the Independence of the United States e one hundred and thirty-sixth.

THOS. ALEXANDER,
Clerk of the District Court of the United States of America for the Southern District of New York in the Second Circuit.

The foregoing writ is hereby allowed.

LEARNED HAND,
U. S. District Judge.

59 *Citation.*

y the Honorable, one of the Judges of the District Court of the United States for the Southern District of New York, in the Second Circuit, to Thomas T. Sherman, defendant-in-error, Greeting:

You are hereby cited and admonished to be and appear before United States Circuit Court of Appeals for the Second Circuit, o be holden at the Borough of Manhattan in the City of New ork, in the District and Circuit above named, on the 3rd day of ugust, 1912, pursuant to a writ of error filed in the Clerk's office f the District Court of the United States for the Southern District f New York, wherein John Armstrong Chaloner is the plaintiff-in-rror and Thomas T. Sherman is the defendant-in-error, and you re required to show cause, if any there be, why the judgment ren-lered against the said plaintiff-in-error as in said writ of error men-ioned should not be corrected and speedy justice should not be lone in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, this 5th day of July, in the year of our Lord one thousand nine hun-dred and twelve, and of the Independence of the United States the one hundred and thirty-sixth.

LEARNED HAND,
Judge of the District Court of the United States for the Southern District of New York in the Second Circuit.

360 *Stipulation as to Correctness of Transcript.*

United States District Court, Southern District of New York.

JOHN ARMSTRONG CHALONER, Plaintiff,

v.

THOMAS T. SHERMAN, Defendant.

It is hereby stipulated and agreed, that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated November 5, 1913.

WILLIAM D. REED,
Attorney for Plaintiff.

EVARTS, CHOATE & SHERMAN,
Attorneys for Defendant.

361 *Certification of Transcript.*

UNITED STATES OF AMERICA,
Southern District of New York, ss:

JOHN ARMSTRONG CHALONER, Plaintiff,
v.
THOMAS T. SHERMAN, Defendant.

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America, for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 5th day of November in the year of our Lord one thousand nine hundred and thirteen and of the Independence of the said United States the one hundred and thirty-eighth.

[SEAL.] ALEX. GILCHRIST, JR., *Clerk.*

362 United States Circuit Court of Appeals for the Second Circuit, October Term, 1913.

No. 202.

Argued May 7, 1914. Decided June 5, 1914.

JOHN ARMSTRONG CHALONER, Plaintiff in Error,
vs.
THOMAS T. SHERMAN, Defendant in Error.

In Error to the District Court of the United States for the Southern District of New York.

Before Coxe and Rogers, Circuit Judges, and Mayer, District Judge.

This cause comes here upon writ of error to review a judgment of the District Court, Southern District of New York, entered upon the verdict of a jury directed by the court in favor of defendant-in-error, who was the defendant below.

MAYER, *J.:*

Chaloner, who was adjudicated an incompetent by the Supreme Court of the State of New York in 1899, brought this action in 1904 to recover damages against Sherman, who was appointed his com-

mittee in 1901, for alleged wrongful withholding of and re-
363 fusal to turn over on April 4, 1904, Chaloner's property then in Sherman's custody as committee.

The numerous assignments of error, because of exclusion of testimony by the trial court, are based upon the theory that this court has power to set aside the judgment of the New York Supreme Court. The sole question is whether that judgment is void or was procured by extrinsic fraud so as to subject it to a successful collateral attack in another jurisdiction.

On March 10, 1897, an ex-parte order was made by a Justice of the New York Supreme Court, committing Chaloner as an insane person to the institution known as Bloomingdale Insane Asylum at White Plains, Westchester County. This order was in accordance with the Insanity Law of New York (Laws of 1896, Chapter 545) which permits a commitment without notice and that statute has been held to be constitutional.

Sporza vs. German Savings Bank, 192 N. Y., 8.
Matter of Walker, 57 App. Div., 1.

While an inmate of that institution under the commitment, a proceeding looking to the appointment of a committee was commenced by a petition presented by two of his brothers to the Supreme Court in the County of New York. This petition was accompanied with the affidavits of several physicians as to the mental condition of the alleged incompetent, and a notice of motion that on May 19, 1899, the petitioners would apply to the court for an order granting the prayer of the petition. Thereupon, on May 9, 1899, the court made an order requiring personal service on Chaloner of this order, the notice of motion, petition and affidavits.

On the same day, viz.: May 9, 1899, personal service was made on Chaloner at the Bloomingdale Asylum.

On May 19, 1899, when the motion was returnable, no one appeared in opposition thereto and the court, as provided by sections 2327 and 2328 of the New York Code of Civil Procedure, ordered that a commission in the nature of a writ de lunatico inquirendo be issued out of and under the seal of the court directed to three commissioners to inquire by a jury of the County of New York
364 into the competency of the alleged incompetent and it was also ordered that the Sheriff be instructed to summon a jury in the manner required by law. It was further ordered that the commission be executed in the County of New York and that at least five days' previous notice of the time and place of the execution of the commission be given to Chaloner and to the person having charge of him who, in this instance, was the Medical Superintendent of the Asylum. It was further ordered that the Commissioners might, in their discretion, dispense with Chaloner's attendance unless the jurors or any of them should require such attendance.

Notice dated May 23, 1899 that the commission would be executed on June 12, 1899 at 4 P. M., at the New York County Court House,

was personally served on both Chaloner and the Medical Superintendent on June 6, 1899.

The Commissioners took their oath on June 5, 1899 and it was filed on June 12, 1899.

The jury was duly summoned for and sat with the Commissioners on June 12, 1899 at the New York County Court House. Chaloner did not appear in person or by attorney. Counsel for the petitioners stated that, if after hearing the testimony the jury desired the presence of the alleged incompetent, he would be brought before them. Testimony was taken as to the mental condition of Chaloner and as to the property owned by him.

The Medical Superintendent testified that Chaloner said he was physically unable to be present.

Counsel for petitioners again said that he thought it entirely proper to take an adjournment to any day agreeable to the Commissioners in order to produce Chaloner before the jury, but the jury stated that they did not desire his production. Thereupon counsel called the jury's attention to the order of the court requiring the presence of Chaloner if any of the Commissioners or the jurors so wished.

Thereafter the Medical Superintendent was again called and stated that to produce Chaloner would temporarily do him harm mentally and that Chaloner "said he did not want to come down." Dr. Carlos F. MacDonald then testified that to call Chaloner would "tend to aggravate his mental condition."

Finally, the matter was submitted to the jury and a verdict was returned that Chaloner was incompetent.

365 A notice of motion for June 23, 1899, for an order confirming the inquisition and appointing Prescott Hall Butler, Committee of the person and estate of Chaloner, was personally served on him on June 15, 1899 at the Asylum.

There being no opposition, the court, on June 23, 1899, made and filed its decretal order of confirmation and appointed Butler the committee. Butler subsequently resigned and his resignation was ordered accepted by the court on November 19, 1899 and Sherman, the defendant here, was appointed in his place.

Chaloner claims that he is and at all times was a resident of Virginia and for that reason his sanity could not be determined in New York; that he was lured into the State of New York in 1897 and was committed improperly without notice, that the inquiry de lunatico in 1899, in any event, should have been in Westchester County; that the notice thereof was insufficient; that the decretal order and all the proceedings were void, among other reasons, because he was not present before the Commissioners and the Sheriff's jury; that he always was and now is sane and was so declared in 1901 by a court of competent jurisdiction in Virginia; and that, therefore, the appointment of Sherman was void.

Insanity is, of course, not necessarily a continuing condition but the trial court was right in holding that Chaloner's present condition never became an issue in the case and could not have become so,

unless the court below had been justified in collaterally setting aside the decretal order.

Then, if defendant had adduced some evidence of present incompetency as an affirmative defense, and then only would the present mental condition of plaintiff have been an issuable fact.

The trial court was likewise right in excluding testimony to show the mental condition of Chaloner in 1899 for that issue could not be litigated in this action and was solely for the New York courts.

Matter of Curtiss, 137 App. Div. 584; 199 N. Y., 36.

Whether or not, in 1897, plaintiff was lured into this state was immaterial because defendant was appointed not by virtue of the 1897 proceeding but as successor to the committee appointed in the 1899 proceeding.

Even assuming that plaintiff was at all times a resident of
366 Virginia, the question of his residence was one of the facts in issue in the 1899 proceedings and having been there adjudicated cannot be collaterally attacked (Kinnier vs. Kinnier, 45 N. Y. 535); but, in any event, the New York court had jurisdiction in view of the fact that plaintiff was within the state and had property therein when the proceedings were commenced.

Section 2323 of the New York Code of Civil Procedure provides: "An application for the appointment of such a committee must be made by petition which may be presented by any person. Except as provided in the next section" (relating to incompetents in state institutions) "where the application is made to the supreme court, the petition must be presented at a special term held within the judicial district, or to a justice of said court, within such judicial district at chambers where the person alleged to be incompetent resides; or if he is not a resident of the state or the place of his residence cannot be ascertained, where some of his property is situated or the State institution is situated of which he is an inmate."

The venue of a proceeding is entirely within the control of a state in respect of subject matter over which a state court has sole jurisdiction and the fact that Chaloner had real property in New York County was enough to satisfy the statute.

Matter of Ganse, 9 Paige Chancery, 416.
Emmerich vs. Thorley, 35 App. Div., 452.

The trial court was also correct in excluding testimony offered to show that the testimony in the 1899 proceeding was perjurious.

The question whether the alleged perjurious testimony was true was necessarily adjudged by the New York court in finding the plaintiff incompetent. This court cannot determine whether or not the testimony in question was perjured without trying over again the very same issue which the New York Court decided when it made the decretal order complained of. It is well settled that the fact that a judgment is procured by false testimony does not open it to collateral attack.

367 U. S. vs. Throckmorton, 98 U. S., 61.
Freeman on Judgments (4th Ed.), sec. 334.

The failure of a person affected by an order or judgment to appear after due notice, cannot, of course, affect the validity of an adjudication.

Simon vs. Craft, 182 U. S., 427.

The record shows that scrupulous care was exercised in serving the various notices of motions and proceedings on Chaloner.

If the trial judge had received in evidence the excluded letter written in July 1897 by Chaloner to Woods, a Virginia attorney, it would have appeared that he then wrote:

"It is unnecessary for me to say that nothing but the most unexpected and dire necessity could induce me to go before a 'Sheriff's Jury,' the usual manner, in the State of New York, of carrying out a Habeas Corpus Proceedings for a man who has been declared insane by a Judge. I object to this for three reasons. First, because it is not the right way to go about it. I am not a citizen of the State of New York, and therefore the 'Sheriff's Jury' does not apply to my case.

Second, because I do not desire the notoriety consequent upon such a proceeding.

Third, because my family are most anxious that I should go before a 'Sheriff's Jury' in the desperate hope that the said jury would believe what they, and the doctors, said about me. In which case the Jury would pronounce me insane, and hand me over to the custody of my family, who could then apply for and receive into their hands my property and the management thereof—under the name of a Commission."

And it further appears from Chaloner's deposition excluded by the trial judge, that he absented himself from the 1899 proceeding by his own choice. If, therefore, he knew at that time what he was doing he deliberately failed to appear when full opportunity was afforded to him so to do.

368 But the propriety and sufficiency of the notice as matter of law, are no longer open to question.

Matter of Blewitt, 131 N. Y., 541.

Gridley vs. The College of St. Francis Xavier, 137 N. Y., 327.

Finally, in regard to the failure to give Chaloner notice of the resignation of Butler and the appointment of Sherman as committee, it appears that there is no statutory requirement of notice in such a proceeding and it would seem that notice to the committee of a proposed removal is the only notice required.

Matter of Andrews, 192 N. Y., 514.

But, if notice were required, the failure to give it is an irregularity which must be dealt with by the State court of original jurisdiction.

Matter of Osborn, 74 App. Div., 113.

Matter of Porter, 34 App. Div., 147.

Our conclusion is that the judgment of the New York court was not a void judgment and it must remain valid until reversed or set aside by the courts of New York. This has never been attempted and, therefore, the judgment of the Supreme Court of New York remains to-day in full force and validity. If the petitioner has recovered and is no longer insane, this fact should be brought to the attention of the State Court and if sanity is established the court will undoubtedly restore the plaintiff to his rights. So, too, even if some of the requirements of the statute had been omitted or neglected or insufficient evidence of insanity was adduced, relief must be obtained in the court which appointed the committee. If a prima facie case were made out we have no reason to doubt that the state courts would grant appropriate protection to guard the plaintiff from arrest while attending such proceeding, just as this court did in this case.

Chanler vs. Sherman, 162 F. R., 19.

369 But, however this may be, we think that this court has not jurisdiction to set aside or annul the judgment of the state Supreme Court rendered in a proceeding in which it obviously had jurisdiction.

The judgment is affirmed, with costs.

W. D. Reed, for the Plaintiff-in-Error.
J. H. Choate, Jr., for the Defendant-in-Error.

370 At a Stated Term of the United States Circuit Court of Appeals in and for the Second Circuit, Held at the Court Rooms in the Post-Office Building in the City of New York, on the 15th Day of June, One Thousand Nine Hundred and Fourteen.

Present:

Hon. Alfred G. Coxe, Hon. Henry Wade Rogers, Circuit Judges, and Hon. Julius M. Mayer, District Judge.

JOHN ARMSTRONG CHALONER, Plaintiff in Error,
vs.
THOMAS T. SHERMAN, Defendant in Error.

Error to the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the judgment of said District Court be and it hereby is affirmed with costs.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

A. C. C.

371 Endorsed: United States Circuit Court of Appeals, Second Circuit. J. A. Chaloner vs. Thos. T. Sherman. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Jun- 18, 1914. William Parkin, Clerk.

372 At a Stated Term of the United States Circuit Court of Appeals in and for the Second Circuit, Held at the Court Rooms in the Post-Office Building, in the City of New York on the 6th Day of April, 1915.

Present:

Alfred C. Coxe, Henry Wade Rogers, Julius M. Mayer, Judges.

JOHN ARMSTRONG CHALONER, Plaintiff,
against
THOMAS T. SHERMAN, Defendant.

This 6th day of April, 1915, the plaintiff, John Armstrong Chaloner, by his attorney, William Dike Reed, Esq., came and filed herein and presented to the Court his petition praying for the allowance of a writ of error and assignment of errors intended to be urged by him, praying also that a transcript of the records and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof the Court does allow the writ of error and upon the annexed stipulation of the attorneys for the respective parties hereto, dated March 2nd, 1915, the filing of a bond is hereby expressly waived and it is accordingly

Ordered that a writ of error be and hereby is allowed to have reviewed in the Supreme Court of the United States, the judgment heretofore entered on the 27th day of June, 1914, which affirmed the final judgment herein entered on the 6th day of March, 1912, and it is further

373 Ordered that all further proceedings be superceded and stayed until the final determination of said writ of error by the said Supreme Court of the United States and until the further order of this Court.

ALFRED C. COXE,
Judge U. S. Cir. Ct. of Appeals.

374 United States Circuit Court of Appeals for the Second Circuit.

JOHN ARMSTRONG CHALONER, Plaintiff-in-Error,
against
THOMAS T. SHERMAN, Defendant-in-Error.

To the Honorable the Judges of the Supreme Court of the United States:

Now, comes John Armstrong Chaloner, by his attorney, and complains that in the record of proceedings and also in the rendition of

the judgment of the United States Circuit Court of Appeals for the Second Circuit, in the above entitled cause, on the 27th day of June, 1914, affirming the judgment of the United States District Court for the Southern District of New York, in favor of the defendant in error, *John Armstrong Chaloner,* upon the issues in this action, entered on the 6th day of March, 1912, in said cause, manifest error hath intervened to the great damage of the said John Armstrong Chaloner.

Your petitioner states that this cause was brought on or about the 5th day of April, 1904, by your petitioner against the defendant in error in the United States Circuit Court, Southern District of New York, for damages in the sum of Two Hundred and Sixty-three Thousand Five Hundred and Twenty-three and 65/100 Dollars suffered by your petitioner by reason of the wrongful and illegal acts and misconduct of the defendant in error, in that notwithstanding the illegality, invalidity and nullity of certain orders of the Supreme Court of the State of New York and of certain proceedings respecting the custody of the person and property of your petitioner conducted in said court without jurisdiction, without due process of law, without notice and without the opportunity to your petitioner to appear and be heard, and upon which proceedings said orders
375 were based, the defendant in error claiming to be, by virtue thereof, a committee of the person and estate of the plaintiff in error in and for the State of New York, and under color of the said order and proceedings, not only took, collected, had and received the moneys and property of this plaintiff in error, your petitioner, but has, without the consent or authority of this plaintiff in error, retained and withheld and still retains and withholds the same from this plaintiff in error and has failed and refused and still refuses to turn over and pay the same to this plaintiff in error, your petitioner although duly demanded.

That the defendant in error served and filed an answer to the complaint in said cause, in which answer the defendant in error not only relied upon the validity of said New York orders but went further and alleged that the plaintiff, your petitioner, was and had been in fact insane and further alleged that a certain judgment of the County Court of Albermarle County, State of Virginia, which duly established the sanity of the said John Armstrong Chaloner, your petitioner, was collusive and void.

Thereafter this action duly came to trial before a judge and jury in the United States District Court, Southern District of New York and certain allegations and proofs on the part of the plaintiff in error were heard and considered and certain other allegations and proofs on the part of the plaintiff in error were not allowed to be heard by the Court, excluding among other things the Virginia Court record of November 6th, 1901, which declared plaintiff sane and competent. The Court, on motion of defendant in error at the close of the plaintiff's case, directed a verdict in favor of the defendant in error, and judgment was thereupon entered in favor of the defendant in error against your petitioner upon the issues in the action on the 6th day of March, 1912.

Thereafter your petitioner procured from the United States Circuit Court of Appeals for the Second Circuit, a writ of error to review said judgment and such proceedings were had therein that an order of the United States Circuit Court of Appeals for the Second
376 Circuit was made and entered confirming in all respects said judgment with costs and on the 18th day of June, 1914, a mandate was duly issued thereon to the Judges of the United States District Court for the Southern District of New York, and a judgment was thereupon, and on the 27th day of June, 1914, duly entered affirming in all respects the said final judgment of March 6th, 1912.

Wherefore your petitioner prays for allowance of writ of error to the end that this cause and the said judgment may be carried to the Supreme Court of the United States for review and prays for supersedeas of said judgment and such other process as may cause the same to be corrected in said Supreme Court and that such other and further proceedings may be had as may be proper in the premises.

WILLIAM DIKE REED,
Attorney for John Armstrong Chaloner.

Office & Post Office Address, 45 Cedar Street, Borough of Manhattan City of New York.

377 United States District Court, Southern District of New York.

JOHN ARMSTRONG CHALONER, Plaintiff-in-Error,
against
THOMAS T. SHERMAN, Defendant-in-Error.

It is hereby stipulated, consented and agreed by and between the attorneys for the respective parties hereto that the defendant in error expressly waives the filing of a bond by the plaintiff-in-error on the issuance of a writ of error out of this court for review, in the Supreme Court of the United States of the judgment heretofore entered on the 27th day of June, 1914.

Dated, New York, March 2nd, 1915.

WILLIAM D. REED,
Attorney for Plaintiff-in-Error.
EVARTS, CHOATE & SHERMAN,
Attorneys for Defendant-in-Error.

378 (Endorsed:) United States Circuit Court of Appeals, Second Circuit. John Armstrong Chaloner, Plaintiff-in-error, against Thomas T. Sherman, Defendant-in-error. Petition and Order for Writ of Error and Stipulation. William Dike Reed, Attorney for Plaintiff-in-error, Office & Post Office Address, 45 Cedar Street, Borough of Manhattan, City of New York. United States Circuit Court of Appeals, Second Circuit. Filed Apr. 6, 1915. William Parkin, Clerk.

379 United States Circuit Court of Appeals for the Second Circuit.

JOHN ARMSTRONG CHALONER, Plaintiff-in-Error,
against
THOMAS T. SHERMAN, Defendant-in-Error.

Assignment of Errors.

Now comes the plaintiff in error, John Armstrong Chaloner herein by William D. Reed, his attorney, and respectfully submits and presents and files his assignment of errors complained of and says: That in the record of the proceedings in the above entitled cause in the United States Circuit Court of Appeals for the Second Circuit, there is manifest error in this, to wit:

First. That the learned United States Circuit Court of Appeals for the Second Circuit erred in affirming the judgment of the United States District Court for the Southern District of New York, dismissing the complaint filed by the plaintiff in error in said cause.

Second. That the learned United States Circuit Court of Appeals for the Second Circuit erred in affirming the decision of the trial court in holding that the plaintiff Chaloner's present condition of sanity never became an issue in the case and could never become so unless the court below had been justified in collaterally setting aside the decretal order or unless the defendant had adduced some evidence of present incompetency as an affirmative defense.

Third. That the learned United States Circuit Court of Appeals for the Second Circuit erred in affirming the decision of the trial court in excluding testimony to show the mental condition of the plaintiff, Chaloner, in 1899, and in holding that that issue could not be litigated in this action and was solely for the New York Courts.

380 Fourth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that whether or not in 1897, the plaintiff was lured into this State was immaterial.

Fifth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the New York Court had jurisdiction over the plaintiff in the 1899 proceedings, even assuming that the plaintiff was at all times a resident of Virginia.

Sixth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the question of plaintiff's residence was one of the facts in issue in the 1899 proceedings and having been there adjudicated that it cannot be collaterally attacked.

Seventh. That the learned United States Circuit Court of Appeals for the Second Circuit erred in affirming the rulings of the trial court in excluding testimony offered to show that the testimony in the 1899 proceeding was perjurious.

Eighth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the plaintiff Chaloner failed to appear in the 1899 proceedings after due notice of the order or judgment to appear.

Ninth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that care was exercised in serving the various notices of motions and proceedings on the plaintiff Chaloner.

Tenth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in its finding that the plaintiff Chaloner deliberately failed to appear in the 1899 proceedings.

Eleventh. That the learned United States Circuit Court of Appeals for the Second Circuit erred in finding that full opportunity was afforded to the plaintiff Chaloner to appear in the 1899 proceedings.

Twelfth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the propriety
381 and sufficiency of the notice to the plaintiff Chaloner of the 1899 proceedings are no longer open to question.

Thirteenth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that in regard to the failure to give the plaintiff Chaloner notice of the resignation of the committee Butler and the appointment of Sherman as committee that there is no statutory requirement of notice in such a proceeding and that notice to the committee of a proposed removal is the only notice required.

Fourteenth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that if notice were required the failure to give it is an irregularity which must be dealt with by the state court of original jurisdiction.

Fifteenth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the judgment of the New York court was not a void judgment.

Sixteenth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the judgment of the New York court must remain valid until reversed or set aside by the courts of New York.

Seventeenth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the judgment of the Supreme Court of New York remains today in full force and validity.

Eighteenth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that if the petitioner's sanity is established and even if some of the requirements of the statute had been omitted or neglected or insufficient evidence of insanity was adduced, relief must be obtained in the court which appointed the committee.

Nineteenth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that this Federal Court has not jurisdiction to set aside or annul the judgment of the State Supreme Court.

Wherefore the said plaintiff in error prays that the judgment of the Circuit Court of Appeals for the Second Circuit and
382 the judgment of the District Court of the United States for the Southern District of New York be reversed and such di-

rections be given that full force and efficacy may enure to said plaintiff in error by reason of the allegations set up in the complaint filed in said cause.

WILLIAM D. REED,
Attorney for Plaintiff in Error,
John Armstrong Chaloner.

Office & Post Office Address, 45 Cedar Street, Borough of Manhattan, New York City.

383 (Endorsed:) United States Circuit Court of Appeals for the Second Circuit. John Armstrong Chaloner, Plaintiff-in-error, against Thomas T. Sherman, Defendant in Error. Assignment of Errors. William D. Reed, Att'y for Plaintiff in error, Office & Post Office Address, 45 Cedar Street, Borough of Manhattan, City of New York. United States Circuit Court of Appeals, Second Circuit. Filed Ap'l 6, 1915. William Parkin, Clerk.

384 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby Certify that the foregoing pages, numbered from 1 to 383 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of John Armstrong Chaloner, against Thomas T. Sherman as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 7th day of April in the year of our Lord One Thousand Nine Hundred and fifteen and of the Independence of the said United States the One Hundred and thirty-ninth.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN, *Clerk.*

[United States internal revenue documentary stamp, series of 1914, ten cents, canceled 4/7/15. Wm. P., C.]

385 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Judges of the United States Circuit Court of Appeals for the Second Circuit, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the District Court, before you, or some of you, between John Armstrong Chaloner, plaintiff-in-error and Thomas T. Sherman, Defendant-in-error a manifest error hath happened, to the great damage of the said plaintiff-in-error as is said and appears by his complaint, We, being willing that such error,

if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Judges of the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said United States Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness, the Honorable Edward D. White, Chief Justice of the United States Supreme Court this 6th day of April, in the year of our Lord one thousand nine hundred and fifteen and of the Independence of the United States the one hundred and thirty-ninth.

[Seal of the Circuit Court of Appeals of the United States, Second Circuit.]

(L. S.) WM. PARKIN,
Clerk of the Circuit Court of Appeals of the United States of America, for the Second Circuit.

The foregoing writ is hereby allowed.

ALFRED C. COX,
U. S. Circuit Judge.

386 [Endorsed:] United States Circuit Court of Appeals for the Second Circuit. John Armstrong Chaloner, Plaintiff-in-error against Thomas T. Sherman, Defendant-in-error. Writ of Error. William D. Reed, Attorney for Plaintiff-in-error, Office & Post Office Address, 45 Cedar Street, Borough of Manhattan, City of New York. Service of a Copy of the within Paper is hereby admitted Apr. 6 1915. Evarts, Choate & Sherman, Per O. J. ——, Sols. for defendant-in-Error. United States Circuit Court of Appeals, Second Circuit. Filed Apr. 7, 1915. William Parkin, Clerk.

387 By the Honorable Alfred C. Coxe, One of the Judges of the United States Circuit Court of Appeals for the Second Circuit.

To Thomas T. Sherman, Greeting:

You are hereby cited and admonished to be and appear at the United States Supreme Court to be holden at the City of Washington in the District of Columbia within thirty days from the date hereof pursuant to a writ of error filed in the Clerk's office of the United States Circuit Court of Appeals for the Second Circuit wherein John Armstrong Chaloner is plaintiff-in-error and you are defendant-in-error to show cause, if any they be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the Borough of Manhattan in the City of New York, in the District and Circuit above named, this 6th day of April, in the year of our Lord One Thousand Nine Hundred and Fifteen, and of the Independence of the United States the One Hundred and Thirty-ninth.

ALFRED C. COXE,
Judge of the Circuit Court of Appeals of the United States for the Second Circuit.

388 [Endorsed:] United States Circuit Court of Appeals for the Second Circuit. John Armstrong Chaloner, Plaintiff-in-error against Thomas T. Sherman, Defendant-in-error. Citation. William D. Reed, Attorney for plaintiff in error, Office & Post Office Address, 45 Cedar Street, Borough of Manhattan, City of New York. Service of a Copy of the within Paper is hereby admitted Apr. 6, 1915. Evarts, Choate & Sherman, Per C. J. —— Sols. for defendant-in-error. United States Circuit Court of Appeals, Second Circuit. Filed Apr. 7, 1915. William Parkin, Clerk.

389 In the Supreme Court of the United States, October Term, 1916.

No. 121.

JOHN ARMSTRONG CHALONER, Plaintiff in Error,
vs.
THOMAS T. SHERMAN, Defendant in Error.

Stipulation to Correct Errors in Transcript of Record.

It is hereby stipulated and agreed by and between counsel of record for the respective parties in the above entitled cause, that the Clerk shall make the following corrections in the Transcript of Record in said cause before the printing of same:

Folios 94, 95, 99: G. Ruffin Randolph, change to "C. Ruffin Randolph."

Folios 136 through 164: Troubetzskoy, change to "Troubetzkoy."

Folio 198: Troubetzkoi, change to "Troubetzkoy."

Folio 200: Troubetzkoi, change to "Troubetzkoy."

Folio 208: Troubetzkoi, change to "Troubetzkoy."

Folio 211: Cobden, change to "Cobham."

Folios 241 through 245: John V. Dickinson, change to "John B. Dickinson."

Folio 242: Vyrancke, change to "Byvancke."

Folio 299: Cary, change to "Carey."

Folio 300: Cary, change to "Carey."

Folios 301, 302: Cary, change to "Carey."

Folio 324: John V. Dickinson, change to "John B. Dickinson."

Folio 346: Kerswick, change to "Keswick."
390 Folio 581: Troubetzkoi, change to "Troubetzkoy."
Folio 772: Lyons, change to "Lyon."
Folio 819: Lyons, change to "Lyon."
Folio 1030: Nuilly, change to "Neuilly."
Folio 1046: John V. Dickinson, change to "John B. Dickinson."
Folio 1054: Cary, change to "Carey."
Folio 1071: Chanloner, change to "Chaloner."

E. F. COLLADAY,
Attorney for Plaintiff in Error.
JOSEPH H. CHOATE, JR.,
Attorney for Defendant in Error.

391 [Endorsed:] 121—16/24696. No. 121. October Term, 1916. John Armstrong Chaloner, Plaintiff in Error, vs. Thomas T. Sherman, Defendant in Error. Stipulation to Correct Errors in Transcript of Record. Edward F. Colladay, Attorney and Counsellor at Law, Union Trust Building, Washington, D. C.

392 [Endorsed:] File No. 24696. Supreme Court U. S., October term, 1916. Term No. 121. John Armstrong Chaloner, Plaintiff in Error, vs. Thomas T. Sherman. Stipulation to correct errors in Transcript of Record. Filed July 28, 1916.

Endorsed on cover: File No. 24,696. U. S. Circuit Court Appeals, 2d Circuit. Term No. 121. John Armstrong Chaloner, plaintiff in error, vs. Thomas T. Sherman. Filed April 30th, 1915. File No. 24,696.

INDEX

CASES CITED.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1916.

No. 121.

JOHN ARMSTRONG CHALONER, *Plaintiff in Error,*

against

THOMAS T. SHERMAN, *Defendant in Error.*

ARGUMENT OF COUNSEL FOR PLAINTIFF IN ERROR.

OPENING STATEMENT.

This is an action brought by John Armstrong Chaloner, a legal and actual resident of the State of Virginia, against Thomas T. Sherman, a legal and actual resident of the State of New York, to recover certain moneys and personal property owned by the plaintiff in error and in the possession or control of the defendant in error without authority of law, as alleged by said Chaloner.

In March, 1897, Mr. Chaloner was living peacefully upon his estate, "The Merry Mills," in Albemarle County, Virginia, where he had resided for many years theretofore. At that time he was approached by Stanford White and another, acting in the interest of his brothers and sisters, residents of New York, and on false and fraudulent representations was lured to New York City

where in the Kensington Hotel, under the pretense of having his eyes examined by oculists, two alienists, M. Allen Starr and Eugene Fuller, examined him and immediately thereafter, on March 10, 1897, upon the petition of two of his brothers, Winthrop A. Chanler and Lewis S. Chanler, and a cousin, Arthur A. Carey, which petition contained material statements which were perjured, he was committed in ex parte proceedings by Judge H. A. Gildersleeve to a private insane asylum popularly called Bloomingdale, which is a branch of the New York Hospital, maintained by the Society of the New York Hospital, a private corporation.

Mr. Chaloner remained an inmate of said private asylum without further proceedings until May, 1899.

Shortly prior to the 1897 proceedings, said Stanford White, acting in the interest of Mr. Chaloner's brothers and sisters, but without disclosing that fact, law partner of Mr. Chaloner, obtained from Mr. Chaloner a limited power of attorney and managed his property and affairs thereunder until the proceedings of 1899. (Brief of plaintiff in error, p. 393, and appendix to same, p. 490.)

In May, 1899, a petition was filed in the Supreme Court of New York, in the County of New York, signed "Winthrop Chanler by Lewis S. Chanler," and "Lewis S. Chanler," petitioners, sworn to by Lewis S. Chanler, praying "That Stanford White or some other suitable and proper person may be under the order and judgment of this court appointed a committee of the person and of the property and estate of the said John Armstrong Chanler, as an incompetent person. * * *"

The Court appointed David B. Ogden, Allen Fitch and G. Sherman a commission under a writ de lunatico inquirendo, dated the 3d day of May, 1899, and said commission caused the sheriff to summon a jury. The commission and jury assembled at four o'clock in the

afternoon of the 12th day of June, 1899, at the county court house in the borough of Manhattan, New York City, twenty miles away from the place where Mr. Chaloner was confined, heard testimony of alienists as to Mr. Chaloner's mental and physical condition, and testimony of one Charles Weston as to his property, and testimony of said Winthrop Chanler as to his family and property.

Prior to the hearing of June 12, 1899, on June 6, an alleged notice of said proceeding was delivered to Mr. Chaloner in Bloomingdale.

At the hearing Dr. Samuel B. Lyon, superintendent of Bloomingdale, testified that Mr. Chaloner did not appear because he was ill.

The hearing could have been held at White Plains, a very short distance from the place of incarceration of Mr. Chaloner, but instead it was held at four o'clock in the afternoon at the court house in New York City.

The jury disposed of the matter very hastily, one juror remarking, when the question of producing Mr. Chaloner was brought up, "The jury does not care to have Mr. Chaloner produced before them, and for that reason there is no necessity for an adjournment. We can render our verdict now;" and the foreman remarking, "It will be very hard to bring this jury here again and it is not their desire to have an adjournment of this inquest; they think the case can be submitted upon the testimony which has been given. They do not wish to have the respondent placed upon the stand." (Record p. 133.)

One of the commissioners, Mr. Ogden, called attention to the fact that the respondent could be produced in court without any injury or harm being done to himself (Record p. 133), in response to which the several witnesses were recalled to the stand and testified that

it would do the respondent temporary harm to force him to attend (Record p. 134).

The jury then hastily closed the case by rendering their verdict, which was followed in due course by the report of the commission and the judgment of the court declaring Mr. Chaloner insane and appointing one Prescott Hall Butler committee of his person and estate.

No guardian ad litem or other person to represent the respondent was present or took any part in the proceedings, and the Court's order does not recite any reason why the respondent was not present before the commission and jury, as required by law. The court's order recites that Mr. Flamen B. Candler of counsel for the petitioners was heard and Mr. Henry Lewis Morris, attorneys for the heirs at law and next of kin, but the only recital contained therein with reference to the representation of the respondent is in the words "and no one appearing in opposition thereto" (that is, to the petition and proceeding). (Record p. 136.)

The most striking portion of the testimony on which the proceedings last mentioned were based is that of Dr. Austin Flint as follows:

> "Q. And from what form of insanity is he now suffering?
>
> "A. He is a typical case of what is known as paranoia or chronic illusional insanity.
>
> "Q. In your opinion, Doctor, is that progressive and incurable?
>
> "A. It is incurable and progressive and will finally terminate in dementia. If I may be allowed to say, those cases frequently last for a very much longer time, quite different from paresis." * * *
>
> "Q. In your opinion, is Mr. Chaloner now

capable of taking care of his estate in person?

"A. No, sir; he is not."

* * * * * *

"A. Nothing could be more typical than that form of disease; it is an absolutely typical case from every point of view." (Record p. 126.)

It is now seventeen and one-half years since that testimony was given, and time has failed to agree with Dr. Flint in his diagnosis and prognosis. Mr. Chaloner has lived on his estate in Virginia continuously for the past seventeen years and has actually managed his own affairs throughout that time.

Immediately before the hearing of June 12, 1899, the Superintendent of the Bloomingdale Asylum at an interview between him and Mr. Chaloner, who was then sick in bed, when the question of whether Mr. Chaloner would attend the hearing was under discussion, granted to Mr. Chaloner parole, that is to say, the right to go freely about the grounds of the institution and outside the same without being accompanied by an attendant. Mr. Chaloner made frequent efforts to secure the services of counsel to institute habeas corpus proceedings and have himself legally freed from the institution. Among others to whom he applied were the late David B. Hill, of New York, and the late John W. Daniel, of Virginia. He also wrote a very full letter to his former Virginia counsel, Captain Micajah Woods (Record p. 156), the delivery of which he entrusted to said H. V. N. Philip and which was not delivered for many months after it was written, and then said Philip instructed said Woods to do nothing about the matter until he heard from him; the result of which was, of

course, that said Woods took no proceedings in the matter.

Despairing of ever obtaining counsel, Mr. Chaloner escaped from Bloomingdale, went to Philadelphia, where he placed himself under the observation of an alienist for a period of several months, and at the end of that time received the unqualified opinion of said alienist that he was sane. Not satisfied with this, he placed himself under the observation of another alienist at a sanitarium in the mountains of Pennsylvania for a period of about two months and again received the unqualified opinion that he was sane. Thereupon he returned to his home in Virginia, conferred with his counsel, Captain Micajah Woods, a proceeding to determine his sanity was regularly instituted in the county court of Albemarle County, State of Virginia, and the jury returned a verdict finding him to be of sound mind, and a judgment was duly entered thereon confirming the same. That judgment bears date of November 6, 1901, and under the full faith and credit clause of the Constitution of the United States is entitled to full and complete recognition throughout the United States, but notwithstanding the same, plaintiff in error, now at the bar of this court, continued in the anomalous situation of being, upon the records of the Supreme Court of New York, insane in that State, while actually, legally and judicially sane in the State of his citizenship and residence, Virginia. It might be stated in passing, as a matter of common knowledge, that within the present year Mr. Chaloner as a sane man and a litigant *sui juris* personally appeared and, with his counsel, prosecuted an action at law before a judge and jury of one of the courts of the United States in this District of Columbia and was awarded a verdict and judgment.

On November 15, 1901, said Prescott Hall Butler ten-

dered to the Supreme Court of New York his resignation as committee of the person and estate of the plaintiff in error by petition and prayed that Thomas T. Sherman, the defendant in error in this cause, be appointed committee in his stead. An order was entered by the Court accepting said recognition and making said appointment. The proceedings consisted of nothing but the petition signed and sworn to by Prescott Hall Butler and also signed by Evarts, Choate and Beaman as attorneys for petitioner, the consent of Thomas T. Sherman appended thereto to be appointed as committee, his acknowledgment of the same, and the order of the court thereon. There was absolutely no notice of the proceeding given to John Armstrong Chaloner or to anyone in his behalf. (Record pp. 145-149.)

On April 5, 1904, suit was brought in the United States Circuit Court for the Southern District of New York by John Armstrong Chaloner against Thomas T. Sherman, summons being issued on that date, and thereafter the complaint was duly served and filed.

In the complaint it is alleged "That heretofore at various times prior to the commencement of this action, and since November 6, 1901, the above-named defendant falsely and wrongfully claiming to be thereunto authorized by virtue of an alleged appointment as committee of the person and estate of the plaintiff in and for the State of New York, did unlawfully take, collect, have and receive for the use of this plaintiff, but without the consent or authority of the plaintiff, divers sums of money, chattels and negotiable securities, the exact nature and amount whereof are well known to the defendant but not accurately known to this plaintiff, but which included, among other things, the following moneys and property, to-wit: * * *"; following which the allegations are made in detail as far as the

facts were within the knowledge of the plaintiff (Record p. 3).

In the petition the order of the Supreme Court of the State of New York, dated November 19, 1901, appointing said Thomas T. Sherman as committee is attacked as having been made and entered without any notice whatsoever to the plaintiff and is alleged to be absolutely null and void. (Record p. 5).

The proceedings of June 23, 1899, and the proceedings of 1897 are attacked as being absolutely null and void and in no wise binding upon the plaintiff, and that in so far as the statutes of New York authorized, directed or sanctioned the said proceedings those statutes were and are repugnant to and in contravention of the Constitutions of the State of New York and of the United States and are absolutely illegal and void. (Record pp. 5 and 6.)

It is further alleged that the 1899 proceedings were instituted, prosecuted and determined without lawful or reasonable opportunity to the plaintiff to appear or be heard and at a time when he was unlawfully and falsely restrained and imprisoned in the Bloomingdale asylum, and that during the pendency of said proceedings he was at all times under duress and imprisoned and absolutely subject to the orders and control of the private corporation owning and operating said asylum, and at no time was free to appear, either personally or by counsel, before the Supreme Court of New York. (Record p. 6.)

It is further alleged that the order of March 10, 1897, was made without notice to the plaintiff and without any opportunity given to him to oppose or contest the making thereof, and without permission to the plaintiff to appear before the court in person or by counsel. (Record p. 7.)

The prayer of the petition is that plaintiff have judgment against the defendant for the sum of $263,523.65, with interest from April 4, 1904, besides costs and disbursements. (Record p. 8.)

Thomas T. Sherman, the defendant in error, answered said petition at length, the substantial effect of his answer being a denial of the allegations in the petition. *He did, however, admit that his appointment on November* 19, 1901, *was made without notice to the plaintiff* (*Record p.* 10). He further pleaded the various proceedings at length.

On the 18th day of October, 1909, the spelling of the name of the plaintiff in error was by order of the court changed on the record to "Chaloner," having theretofore been spelled on the record "Chanler." This was done pursuant to a stipulation between the counsel of record for the respective parties and at the request of the plaintiff in error.

Depositions of a number of witnesses and of the plaintiff in error were taken, the cause was heard in the United States District Court, the United States Circuit Court having been abolished, and the jury returned a verdict for the defendant by direction of the court. In the course of the trial the presiding judge excluded all evidence as to sanity, as to the luring of the plaintiff in error from Virginia to New York; all evidence as to perjury; all evidence as to the physical condition of the plaintiff in error; all evidence as to the commitment proceedings of 1897, evidence of fraud, and refused to receive either the record of the Virginia proceedings or the duly authenticated decree of the Virginia court holding the plaintiff in error to be sane.

In directing the verdict for the defendant, the court held that the New York statute was constitutional, notwithstanding it permitted a man to be committed to an

insane asylum without notice, having especial reference to the original commitment in 1897.

An appeal was taken to the United States Circuit Court of Appeals, where the case was heard and the action of the trial court sustained in an opinion written by District Judge Mayer. In that opinion the Court said:

> "The sole question is whether that judgment (of the New York Supreme Court) is void or was procured by extrinsic fraud so as to subject it to a successful collateral attack in another jurisdiction." (Record p. 185.)

Judge Mayer further stated that:

> "On March 10, 1897, an ex parte order was made by a Justice of the New York Supreme Court, committing Chanler as an insane person to the institution known as Bloomingdale Insane Asylum at White Plains, Westchester County. This order was in accordance with the insanity law of New York (laws of 1896, chapter 545) which permits a commitment without notice and that statute has been held to be constitutional.
>
> "Sporza vs. German Savings Bank, 192 N. Y. S.
>
> "Matter of Walker, 57 App. Div. 1."

Judge Mayer further stated that while Mr. Chaloner was an inmate of Bloomingdale under the commitment a proceeding looking to the appointment of a committee was commenced by a petition presented by two of his brothers to the Supreme Court in the county of New

York, which petition was accompanied by the affidavits of several physicians as to his mental condition and a notice of motion that on May 19, 1899, the petitioners would apply to the court for an order granting the prayer of the petition; that thereupon, on May 9, 1899, the court made an order requiring personal service on Chaloner of this order, the notice of motion, petition and affidavits, and that on the same day, May 9, 1899, personal service was made on Chaloner at the Bloomingdale asylum.

Judge Mayer further stated that on May 19, 1899, when the motion was returnable, no one appeared in opposition thereto, when *the court ordered a commission in the nature of a writ de lunatico inquirendo,* to be issued, which was to be executed in the county of New York *and that at least five days previous notice of the time and execution of the same be given to Chaloner* and to the person having charge of him, who in this instance was the medical superintendent of the asylum. It was further ordered that the commissioners might in their discretion dispense with Chaloner's attendance unless the jurors or any of them should require such attendance.

Judge Mayer further stated that notice *dated May 23, 1899,* that the commission would be executed on June 12, 1899, at four p. m. at the New York County court house was personally served on both Chaloner and the medical superintendent on June 6, 1899.

It may be here noted in passing that although this notice was dated twenty days prior to the date for the execution of the commission, June 12, 1899, it was not served until June 6, when there remained only five clear days between the date of service and the date of execution, and one of those five days was a Sunday. It also appears by the record (testimony of Dr. Lyon) that

for three weeks prior to June 12, 1899, plaintiff in error was ill and confined to his bed. Under such circumstances it might have been of material importance to Mr. Chaloner to have had the notice served upon him immediately following its date of May 23, 1899.

It should also be noted that Judge Mayer is mistaken in giving the date of the notice as May 23, 1899. On page 100 of the record this notice is set forth over the names of the three commissioners bearing date New York, May 31, 1899, *and it also appears on page* 95 *of the record that the commissioners were not sworn in as officers of the court until the* 5*th day of June,* 1899.

It appears by the affidavit of William White Whittaker on page 100 of the record, that he served the notice upon John Armstrong Chanler on June 6, 1899, at about two o'clock in the afternoon at the Bloomingdale asylum in the village of White Plains, Westchester County, State of New York. Considering the fact that the plaintiff in error was then lying ill in bed, and that more than two hours would be necessary to prepare and transport an ill man from the Bloomingdale asylum to the railway station and then by rail to the Grand Central Station and by means of city transportation to the New York County courthouse in New York City; and also considering the fact that one of the clear days between June 6 and June 12 was a Sunday, *it is perfectly apparent that the actual clear time given to the plaintiff in error by the said alleged notice was somewhat less than four full days.*

Judge Mayer and the other judges sitting with him sustained the rulings of the District court, and the judgment of that court was affirmed.

A writ of error was sued out and the case brought to this the Supreme Court of the United States for review.

The errors here assigned are as follows:

ASSIGNMENT OF ERRORS.

Now comes the plaintiff in error, John Armstrong Chaloner, herein by William D. Reed, his attorney, and respectfully submits and presents and files his assignment of errors complained of and says: That in the record of the proceedings in the above entitled cause in the United States Circuit Court of Appeals for the Second Circuit, there is manifest error in this, to-wit:

FIRST: That the learned United States Circuit Court of Appeals for the Second Circuit erred in affirming the judgment of the United States District Court for the Southern District of New York, dismissing the complaint filed by the plaintiff in error in said cause.

SECOND: That the learned United States Circuit Court of Appeals for the Second Circuit erred in affirming the decision of the Trial Court in holding that the plaintiff Chaloner's present condition of sanity never became an issue in the case and could never become so unless the court below had been justified in collaterally setting aside the decretal order or unless the defendant had adduced some evidence of present incompetency as an affirmative defense.

THIRD: That the learned United States Circuit Court of Appeals for the Second Circuit erred in affirming the decision of the trial court in excluding testimony to show the mental condition of the plaintiff, Chaloner, in 1899, and in holding that that issue could not be litigated in this action and was solely for the New York Courts.

FOURTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in hold-

ing that whether or not, in 1897, the plaintiff was lured into this State was immaterial.

FIFTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the New York Court had jurisdiction over the plaintiff in the 1899 proceedings, even assuming that the plaintiff was at all times a resident of Virginia.

SIXTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the question of plaintiff's residence was one of the facts in issue in the 1899 proceedings and having been there adjudicated that it cannot be collaterally attacked.

SEVENTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in affirming the rulings of the Trial Court in excluding testimony offered to show that the testimony in the 1899 proceedings was perjurious.

EIGHTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the plaintiff, Chaloner, failed to appear in the 1899 proceedings after due notice of the order or judgment to appear.

NINTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that care was exercised in serving the various notices of motions and proceedings on the plaintiff, Chaloner.

TENTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in its finding that

the plaintiff, Chaloner, deliberately failed to appear in the 1899 proceedings.

ELEVENTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in finding that full opportunity was afforded to the plaintiff, Chaloner, to appear in the 1899 proceedings.

TWELFTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the propriety and sufficiency of the notice to the plaintiff, Chaloner, of the 1899 proceedings are no longer open to question.

THIRTEENTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that in regard to the failure to give the plaintiff, Chaloner, notice of the resignation of the committee, Butler, and the appointment of Sherman, as committee, that there is no statutory requirement of notice in such a proceeding and that notice to the committee of a proposed removal is the only notice required.

FOURTEENTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that if notice were required the failure to give it is an irregularity which must be dealt with by the State Court of original jurisdiction.

FIFTEENTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the judgment of the New York Court was not a void judgment.

SIXTEENTH: That the learned United States Circuit

Court of Appeals for the Second Circuit erred in holding that the judgment of the New York Court must remain valid until reversed or set aside by the Courts of New York.

SEVENTEENTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the judgment of the Supreme Court of New York remains today in full force and validity.

EIGHTEENTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that if the petitioner's sanity is established and even if some of the requirements of the statute had been omitted or neglected or insufficient evidence of insanity was adduced, relief must be obtained in the court which appointed the committee.

NINETEENTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that this Federal Court has not jurisdiction to set aside or annul the judgment of the State Supreme Court.

WHEREFORE the said plaintiff in error prays that the judgment of the Circuit Court of Appeals for the Second Circuit and the judgment of the District Court of the United States for the Southern District of New York be reversed and such directions be given that full force and efficacy may enure to said plaintiff in error by reason of the allegations set up in the complaint filed in said cause.

DISCUSSION OF ERRORS ASSIGNED.

First: The first assignment of error is general in its terms and need not be separately discussed.

Second: *That the learned United States Court of Appeals for the second circuit erred in affirming the decision of the trial court in holding that the plaintiff Chaloner's present condition of sanity never became an issue in the case and could never become so unless the court below had been justified in collaterally setting aside the decretal order or unless the defendant had adduced some evidence of present incompetency as an affirmative defense.*

Plaintiff in error's sanity was alleged in paragraph 3 of the complaint (R. 2), and, in the Fifteenth paragraph of the answer (R. 19), it was denied; and the defendant in error there alleged

> "That the plaintiff at all of the times mentioned and referred to in the said complaint, was, and now is, a lunatic and a person of unsound mind, and that, by reason thereof, he is incompetent to manage himself or his affairs or to employ counsel or to institute or prosecute this action."

It thus appears clearly that Mr. Chaloner's "present condition of sanity" was an issue, and that his right to bring the suit was questioned on that ground.

However, this is not a case of collateral attack in the ordinary sense. This is a case founded upon a judgment of sound mind rendered by a court of record of the State of Virginia on November 6, 1901, which is here set up against a judgment dated June 12, 1909, of a court of record of the State of New York, which we allege to be absolutely void, and also against the order on which the

defendant in error must stand by which the Supreme Court of New York attempted to appoint him committee under date of November 19, 1901, *thirteen days after Mr. of the State of his citizenship and residence. And the said order made by the Supreme Court of New York on November* 19, 1901, *was made as the result of a mere consent arrangement between Prescott Hall Butler and Thomas T. Sherman, without the shadow of notice to the plaintiff in error or to anyone in any wise connected with him, and without a hearing.*

The general rule as to collateral attack on judgments and decrees presupposes that the tribunal rendering the same has jurisdiction of the person and of the subject-matter. In this case, however, the New York Court acted without authority. The statute under which it proceeded did not provide for notice and the attempted notice to Mr. Chaloner was of no effect. It was in law no notice. The circumstances attending the case were such that he had no opportunity to be heard.

When a court acts without authority its judgments, orders and decrees are nullities; they are not voidable, but simply void, and their invalidity may be shown in a collateral proceeding.

This court in the case of Smith vs. Woolfolk, 115 U. S., 143, said that

> "The decree of a court rendered against a party who has not been heard, and has had no chance to be heard, is not a judicial determination of his rights, and is not entitled to respect in any other court." Windsor vs. McVeagh, 93 Wall. 274.

In Smith vs. Woolfolk, after a final decree had been rendered upon a bill in equity to settle an estate, thereafter one of the parties filed in the same case a petition

setting up a matter not included in the original bill and the Circuit Court made an order that the defendants should answer the same on or before a certain day and that in default thereof the petition should be taken as confessed and that service of said order "By letter or on attorneys of said parties, be sufficient service thereof." The Statutes of Arkansas in the courts of which said proceeding was conducted, did not authorize the service of process in either of the methods directed by the order. The sheriff returned that he had served the order by mailing copy thereof to the defendants, directed to their address, without naming it. One Carlton, upon whom, as attorney for the defendants, it appeared a copy of the order had been served, filed a paper in the case in which he said he was not their attorney, but the attorney of the petitioner and disclaimed any interest in the cause on behalf of the defendants. Upon these facts, the trial court decided that there had been sufficient service of the order.

The Supreme Court of the United States held that after a decree disposing of the issues in accordance with the prayer of the bill has been made, it is not competent for one of the parties, without a service of new process or appearance, to institute further proceedings on new issues and for new objects, although connected with the subject-matter of the original litigation, by merely giving the new proceedings the title of the original cause, and concluded in the language first above quoted.

In Windsor vs. McVeagh this Honorable Court said:

> "That there must be notice to the party of some kind, actual or constructive, to a valid judgment affecting his rights, is admitted. Until notice is given the Court has no jurisdiction in any case

to proceed to judgment, whatever its authority may be, by the law of its organization, over the subject-matter. But notice is only for the purpose of offering the party an opportunity of being heard upon the claim or the charges made; it is a summons to him to appear and speak, if he has anything to say, why the judgment sought should not be rendered. *A denial to the party of the benefit of a notice would be in effect to deny that he is entitled to notice at all, and the sham and deceptive proceedings had better be omitted altogether.* * * *"

"The law is, and always has been, that whenever notice of citation is required, the party cited has the right to appear and be heard; and when the latter is denied the former is ineffectual for any purpose. The denial to the party in such case of the right to appear is in legal effect the recall of the citation to him. * * *"

Windsor vs. McVeagh, 93 U. S., 274, 277 and 278.

The foregoing language was used by this Honorable Court in a proceeding in which the judgment in question was collaterally attacked.

In Chaloner vs. Sherman, now at the bar of this Honorable Court, the notice served was one not required or authorized by the Statute under which the proceeding was conducted and was therefore no notice. The statute is part of a title or chapter of the New York Code of Civil Procedure, which has been so carefully worked out and amended as to preclude the idea that its enactment left in force any provisions of the common law on chancery practice to aid it

The court's order required at least a five days' notice, and we have shown that the effective period allowed the respondent was less than four days. The notice was served upon the respondent while he was under duress of imprisonment and while he was confined to his bed with sickness which the medical superintendent of the private asylum, Bloomingdale, testified was real and not pretended. (Rec. page 115.) The proceeding was conducted at the County Court House in New York City, twenty miles away from the place of imprisonment of respondent, when it could have been conducted in White Plains where that place of imprisonment was situated. It was conducted at four o'clock in the afternoon, and the busy men who constituted the jury were so concerned to be relieved of their duties without another session to permit the respondent to be brought before them, that they insisted upon closing the matter and rendering their verdict the same afternoon, notwithstanding one of the commissioners, Mr. Ogden, manifested by his questions a feeling that the respondent should be brought before the commission and jury.

The respondent's presence was dispensed with by the order of the court in advance, unless by condition subsequent, to-wit, the demand of the jury "some or one of them shall require his attendance before the jury." (Rec. 93.) It is true that the court gave the commissioners discretion to dispense with the attendance, but at the same time left the matter to the jurors, some or one of them, and the record will show that by the demands of the jurors to get away, the manifest disposition of Commissioner Ogden to require the production of the respondent was overruled, and the personal convenience of the jurors thwarted the slight chance that had existed for the doing of justice by the production of the respondent at such time as he might be able to attend. (Rec. 133.)

We respectfully submit that in the light of all the facts which we have just pointed out, the language of Windsor vs. McVeagh applies here as follows:

> "That whenever notice of citation is required the party cited has the right to appear and be heard; and when the latter is denied the former is ineffectual for any purpose. The denial to the party in such a case of the right to appear is in legal effect the recall of the citation to him."

Third: The third assignment of error is

"Third: That the learned United States Circuit Court of Appeals for the Second Circuit erred in affirming the decision of the trial court in excluding testimony to show the mental condition of the plaintiff Chaloner in 1899, and in holding that that issue could not be litigated in this action and was solely for the New York courts."

As we contend that the statute under which the 1899 proceedings were conducted was void by reason of unconstitutionality, and that the proceedings themselves were void, and those points in the case will be discussed later in connection with assignments of error more directly addressed to them, we consider that the testimony as to Mr. Chaloner's sanity in 1899 was improperly excluded by the trial court. We contend that Mr. Chaloner's sanity was fully established by the decree of the Virginia court rendered November 6, 1901, and was conclusive upon this point, and under the full faith and credit clause of the Constitution of the United States superseded the 1899 judgment of the Supreme Court of New York. As in our view of the case the 1899 New York judgment was both void and superseded, we think the action of the court in excluding the testimony as to

Mr. Chaloner's sanity in 1899 was clearly erroneous. Furthermore, sanity was made an issue by paragraph III of the complaint and paragraph "Fifteenth" of the answer.

"Fourth: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that whether or not in 1897 *the plaintiff was lured into this State was immaterial."*

The trial court excluded all evidence of the fact that the plaintiff was lured by his family and false friends from his home in Virginia to the State of New York, on the ground that the same was immaterial, and the United States Circuit Court of Appeals affirmed this holding. (Rec. 39.)

The evidence of luring was offered as one part of the evidence to establish fraud in the 1897 proceedings, which fraud we contend was continuing fraud and nullified the 1899 proceedings.

In *Olean Street Railway Company vs. The Fairmount Construction Company,* 55 Appellate Division, 292, it was held as follows at page 293:

"The Court will not sanction any attempt by fraud or misrepresentation to bring a party within its jurisdiction."

(*Snelling vs. Watrous,* 2 Page, 314; *Carpenter vs. Spooner,* 2 Sandf., 717; *Metcalf vs. Clark,* 41 Barb., 45; *Beacom vs. Rogers,* 79 Hun. 220.)

And at page 294:

"We think that good faith and a due regard for the proprieties of the case required of the plaintiff that when the negotiations for a settlement of the matter which brought the parties together terminated, a reasonable opportunity should have been afforded the defendant's president to leave the city and state before any attempt was made to serve a summons upon him; and

inasmuch as this was not done, the plaintiff ought not to be permitted to take advantage of a course of action, which, if not amounting to actual fraud and deceit, was certainly equivalent thereto, for it involved a breach of the confidence which King had reposed in the bona fides of the invitation of the plaintiff's president to place himself within the jurisdiction of the court." (*Allen vs. Wharton*, 13 N. Y. Supplement, 38; *Higgins vs. Dewey*, 34 New York State Reports, 692.)

The decisions are uniform that deceit in bringing a party within the court's jurisdiction vitiates the service of legal process.

Even if there were no authorities directly in point on this question of luring, we submit that the evidence of luring should have been admitted as a necessary part of the plaintiff's evidence to establish fraud in his attack upon the New York judgment of 1899.

"Extrinsic or collateral fraud" is defined to be actual fraud, such that there is on the part of the person chargeable with it the *malus animus;* the *mala mens* putting itself in motion and acting in order to take an undue advantage of some other person for the purpose of actually and knowingly defrauding him. There is an admitted exception to this general rule in cases where, by reason of something done by the successful party to the suit, there was, in fact, no adversary trial or decision of the issues in the case. Where the unsuccessful party has been prevented from exhibiting fully his case by fraud or deception practiced on him by his opponent, as by keeping him away from the court * * * or where the defendant never had knowledge of the suit, being kept in ignorance of the acts of the plaintiffs, or where an attorney fraudulently or without authority assumes to represent a party and connives at his defeat * * *. *These and similar cases which show that there*

never has been a real contest in the trial or hearing of the case, are reasons for which a suit may be sustained to set aside and annul a former judgment or decree and open the case for a new and fair hearing. *Flood vs. Templeton,* 92 Pacific, 78, 81; 152 California, 148; 13 L. R. A. (N. S.) 579 (quoting and adopting *United States vs. Throckmorton,* 98 U. S., 61).

By extrinsic or collateral fraud for which a court of equity will set aside a judgment by a court of competent jurisdiction is meant some act or conduct of the prevailing party which has prevented a fair submission of the controversy. *Garret Biblical Institute vs. Meinhard,* 108 Pacific, 80, 81; 82 Kansas, 338.

The proceedings which culminated in the appointment of the defendant in error as committee of the person and estate of the plaintiff in error were all instituted and conducted as the result of a conspiracy on the part of the brothers and sisters, cousin, and false friends of the plaintiff in error to have him adjudged insane and incarcerated in a private asylum, and the evidence of luring was admissible as one of the overt acts connected with the conspiracy, and as one of the manifestations of fraud affecting all the said proceedings.

Fifth: That the learned United States Circuit Court of Appeals for the second circuit erred in holding that the New York Court had jurisdiction over the plaintiff in the 1899 proceedings, even assuming that the plaintiff was at all times a resident of Virginia.

Sixth: That the learned United States Circuit Court of Appeals for the second circuit erred in holding that the question of plaintiff's residence was one of the facts in issue in the 1899 proceedings and having been there adjudicated that it can not be collaterally attacked.

These two assignments will, in effect, be covered by our argument on the point that the New York proceedings were void, and need not be separately discussed.

Seventh: That the learned United States Circuit Court of Appeals for the second circuit erred in affirming the rulings of the trial court in excluding testimony offered to show that the testimony in the 1899 proceedings was perjurious.

As in the case of the fourth assignment of error on the point of luring the plaintiff from Virginia to New York, the evidence offered to prove that the testimony in the 1899 proceedings was perjurious was offered with other evidence upon the theory that all the evidence so offered taken together would establish such fraud as would lay the judgment open to attack in this case.

The offers to prove perjurious statements will be found on pages 26, 27, 31, 43, 44, 53 and 54 of the record.

On page 26, folio 50, a printed copy of the 1897 lunacy proceedings was offered and particularly that portion of the same containing the statement of "J. A. Chanler's" conduct and actions in Virginia. The offer was objected to, objection sustained, and exception noted. (Page 27.)

On pages 53 and 54 the testimony of Mr. Winthrop Chanler in which he admitted that the statements contained in the original petition of 1897 were untrue, was offered, objected to, objection sustained, and exception noted.

In the original petition in the 1897 proceedings, Winthrop A. Chanler, Lewis S. Chanler, and Arthur A. Carey stated as follows:

"Mr. J. A. Chanler has for several months,

while at his home in Virginia, been acting in a very erratic manner. He has limited himself to a peculiar diet, he has burned his hand by carrying hot coals in it, he has devised many peculiar projects, such as a roulette scheme to beat Monte Carlo, and he gives as his reason for these and other acts that he is inspired by a spirit which directs him."

The oath to that petition is as follows:

"W. A. Chanler, Lewis S. Chanler, and A. A. Carey, being duly sworn, depose and say *that they have read the foregoing petition and know the contents thereof, and that the same is true to the knowledge of deponents,* except as to the matters therein stated to be alleged on information and belief, and as to those matters they believe it to be true." (Rec. 109.)

It should be noted by the court that the statements above quoted as to Mr. Chanler's conduct and actions were not alleged upon information and belief.

Counsel for defendant in error, in his oral argument, endeavored to minimize this matter with the statement that the petitioners merely omitted to notice that in their verification the statement was not alleged to be made upon information and belief. *When a man's sanity before the law, his personal liberty, and his property are at stake, and are the subject of a petition, it is incumbent upon the petitioners to be careful what they swear to.*

Mr. Winthrop A. Chanler testified in this case November 16, 1905, and his testimony is set forth in the "Brief of Plaintiff in Error," on pages 382 to 401.

On page 399, by the answer in the middle of the page,

he admitted that neither he, his brother Lewis, nor his cousin Arthur A. Carey saw John Armstrong Chaloner, this admission having particular reference to the truth or falsity of statements made by these three men in the petition on which Mr. Chaloner was committed.

This testimony of Winthrop A. Chanler was duly offered in evidence, objected to, objection sustained, and exception noted. See the record, pages 53 and 54.

Said Winthrop A. Chanler, in his said deposition, was asked and answered as follows:

"Q. Did Lewis personally know anything about the condition of your brother's health?

"A. I don't think so.

* * * * * *

"Q. Now did Mr. Carey know anything about the condition of your brother's health at the time of the commitment?

"A. Except what Doctor Fuller told him.

"Q. I mean in addition to what he was told by Doctor Fuller and by you, did Mr. Carey know anything at all about the condition of your brother's health?

"A. No, not at that time.

"Q. So that Mr. Carey had not seen your brother for at least two years prior to the time of commitment?

"A. I don't know that.

"Q. Wasn't that discussed between you when Mr. Carey came down here?

"A. It may have been.

"Q. Now why, I ask you, that is because you probably remember that in your application for your brother's commitment you and Mr. Lewis Chanler and Mr. Carey sign a petition in which

you state that 'Mr. John A. Chanler has, for several months, while at his home in Virginia, been acting in a very erratic manner. He has limited himself to a peculiar diet; he has burned his hands by carrying hot coals in them; he has devised many peculiar schemes, such as a roulette scheme to beat Monte Carlo, and he has given as a reason of these and other acts that he is inspired by a spirit which directs him; for the past three weeks entirely he has constantly talked of these delusions; has neglected his health; has injured his person and has been at times highly excited,' and then all three of you sign an affidavit stating that you knew the contents of the foregoing petition and that the same was true of your own knowledge except as to matters therein stated to be alleged on information and belief, and there are no matters in the petition which are stated on information and belief; now, how did you come to make that affidavit that you made these facts of your own knowledge?

"A. *Can I say I was told this and that by so and so and had seen him and talked with him? You know I didn't see him myself. You know Lewis nor Carey didn't see him.*"

(Brief of Plaintiff in error, pages 398-399.)

These are strange admissions coming from an original petitioner in this case, a brother of the man whom he and his brother and cousin had committed upon their false petition, to a private insane asylum; and it is even stranger to hear distinguished counsel for defendant in error make light of the same and attempt to gloss them over before this Honorable Court.

Many offers were made to prove that the plaintiff was sane, and to prove what his real physical and mental condition was, both at the time of the 1897 proceedings and the 1899 proceedings. These offers were objected to, objection sustained, and exceptions noted.

We call especial attention to the offer of the testimony of the witness Pedro N. Piedra (R. p. 31).

This witness was the trained nurse who attended Mr. Chaloner in Bloomingdale.

At the foot of page 31 of the Record, counsel for the plaintiff in error inquired of the court whether he would be permitted to examine this witness at all about any physical or mental condition of Mr. Chaloner in 1899, to which the court replied, "No."

Counsel then suggested to the court: "The purpose of it, as I say, being to show that these proceedings were fraudulent; that the man was perfectly sane and that they knew it; and that the doctors stated so to him."

This offer of proof goes not only to the question of perjury by the alienists and lay-witnesses in the 1899 proceedings, but goes to the question of conspiracy and fraud as affecting those proceedings.

On page 43 of the Record, at the foot of the page, evidence was offered to contradict the evidence of the alienists and to show that the same was false, perjurious, and fraudulent; and that the court was deceived and misled. Objection was made and sustained, and exception noted.

"Eighth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the plaintiff, Chaloner, failed to appear in the 1899 *proceedings after due notice of the order or judgment to appear."*

"Ninth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that care was exercised in serving the various notices of motions and proceedings on the plaintiff, Chaloner."

"Twelfth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the propriety and sufficiency of the notice to the plaintiff, Chaloner, of the 1899 *proceedings are no longer open to question."*

The above quoted eighth, ninth and twelfth assignments of error will be treated together, because they raise the whole question of notice.

We have printed, and there has been handed to the Court, a copy of almost the whole of Title VI of the Code of Civil Procedure of New York. The sections omitted we have considered wholly immaterial here. This paper is entitled "Appendix to argument of counsel for plaintiff in error," and is appended hereto.

This Title VI was clearly intended by the New York Legislature to set forth fully the procedure in cases involving the appointment of a committee for an alleged lunatic. This title as it stood prior to 1895 is set forth in Banks & Bros. edition of the New York Code of Civil Procedure, issued in 1894. Section 2323-a does not appear in said title in that edition. It was added in 1895, when the whole title was thoroughly revised by the legislature. In that year, eleven of the thirty sections in the title were amended or added.

Prior to 1895 there was no provision in the title for notice to be given to a lunatic or an alleged lunatic. In making a general revision of the title, and inserting section 2323-a, the legislature specifically provided in that section that in the cases covered by it "Notice of

the presentation of such petition shall be personally given to such person." That section is expressly limited to cases of persons whose incompetency has been established, and who are inmates of State institutions at the time when the petition is presented.

Section 2325, under which the proceedings in this case were conducted, contains no requirement or authorization for notice to the alleged lunatic.

There can be no doubt that when the State legislature made the general revision of Title VI it did exactly what it intended to do, namely, authorized and required notice in the cases covered by section 2323-a, and, by intentional omission, excluded either authorization or requirement of notice to the alleged lunatic in all other cases.

This being so, the statute under which the proceedings of 1899 were conducted and the judgment of June, 1899, rendered, was and is unconstitutional and void, and, as a consequence of that condition, the entire 1899 proceedings, including the judgment therein, are void and of no effect, and the order entered November 19, 1901, appointing the defendant in error, Thomas T. Sherman, committee, is absolutely void.

This matter is discussed very fully in the brief of plaintiff-in-error at pages 548-564; and it is only necessary here to cite a few additional authorities.

The case of Stuart v. Palmer (Brief of Plaintiff-in-Error, pp. 550-551) has been referred to in many subsequent cases, a few of which we mention and quote from as follows:

In the matter of Grout, 105 N. Y. App. Div., 98, 109.

The Federal courts and nearly all State courts have for many years united in so declaring, and the Court of Appeals, as early as 1878, in Stuart vs. Palmer declared that a hearing or an opportunity to be heard, in

which the citizen may defend, enforce and protect his rights, is absolutely essential to constitute due process of law; which principle has since been followed by all our courts, and is already now so firmly established as the law of this State as to be beyond controversy. So carefully have the courts guarded this constitutional and secured right of the citizen that the statutes omitting this required essential have uniformly been condemned, even where it appeared, as it does in this case, *that the party proceeded against was permitted, through the courtesy of the court, to have and did have notice of the proceeding and an opportunity to be heard.* It is not enough that a person may by chance have notice, or that he may as a matter of favor or courtesy have a hearing; the law itself to be constitutional must require notice and give a right to a hearing. It matters not upon the question of the constitutionality of such law that the questions involved have been fully decided. The essential validity of the law is to be decided, not by what has been done under it, but by what may by its authority be done.

(Stuart vs. Palmer, 74 N. Y., 183; Gilman vs. Tucker, 128 N. Y., 190; Coxe vs. State, 144 id., 396; Colon vs. Lisk, 153 id., 188.)

City of Brooklyn vs. Franz, 33 N. Y. Sup., 870:

Notice of some kind is essential, and, because there is no provision in this statute for a notice or an opportunity to be heard, it is violative of the constitutional provisions for the protection of property rights.

People vs. Dickinson, 36 N. Y. Sup., 749:

In Stuart vs. Palmer it was first authoritatively decided that no law authorizing the imposition of taxes or assessments by local authorities is valid, unless the

law itself provided for a hearing of the owners of the property to be assessed. This rule has never since been departed from by the Court of Appeals, but, on the contrary, has often been reaffirmed.

In re Mayor vs. City of New York, 70 N. Y. Sup., 228:

It is manifest, from a reading of the above-cited statute that, unless included by permissible construction of Section 2, there is a total absence of provision for notice to the parties against whose property an assessment might be imposed. Without such a provision an act which authorizes an assessment must be deemed unconstitutional, since it has the effect of depriving the owner of the property to be assessed of his property without "due process of law."

People ex rel. Schofield vs. Schoonover, 47 N. Y. App., 281:

It is true that no valid tax can be imposed, except upon notice and opportunity for a hearing given to the taxpayer, and a statute which does not provide for such notice and hearing is unconstitutional and void.

People ex rel Barnard vs. Wemple, 117 N. Y., 84.

It is said that notice was given to the owner by letter from the Comptroller's Office. That was a very proper thing to do but did not affect the occupants or help the case; for the question always is, not what was done, but what might be done under the law.

People ex rel N. Y. Edison Co. vs. Willcox, 207 N. Y., 108.

There is no provision under the statute requiring the Public Service Commission to give notice to the appellant or any one else of the application of the respondent

for leave to issue certificates. Therefore the decision of the commission could not conclude the appellant on the question of the respondent's franchise in any litigation where it may be entitled to raise the question. The voluntary appearance of the appellant before the commission would not give any greater validity to the determination of the commission, because consent cannot confer jurisdiction.

Security Trust Co. vs. The City of Lexington, 205 U. S., 323, 333.

If the statute did not provide for a notice in any form, it is not material that as a matter of grace or favor notice may have been given of the proposed assessment. It is not what notice, uncalled for by the statute, the tax payer may have received in a particular case that is material, but the question is, whether any notice is provided for by the statute.

Central of Georgia Ry. vs. Wright, 207 U. S., 127, 138.

This notice must be provided as an essential part of the statutory provision and not awarded as a matter of favor or grace.

Remsen et al. vs. Wheeler, 105 N. Y., 579.

The rules laid down in Stuart vs. Palmer are salutary and important, and for the protection of personal rights and private property must be enforced in all cases to which they are applicable.

In People ex rel Peabody vs. Chanler, 133 N. Y. App. Div., Judge Gaynor, dissenting, said:

> "It is not disputed that alleged lunatics, the same as alleged criminals, may be temporarily

committed without a hearing lawfully in the discretion of courts and judges, i. e., until their case can be heard in conformity with the requirements of due process of law; but they cannot be committed permanently, any more than alleged criminals, without a hearing of a judicial nature on notice which, and nothing short of which, is due process of law; and any statute permitting the like is void. This statute prescribes no notice or hearing and none was given or had. This latter is unimportant, however, for the test of the validity of a statute is not what was done, but what may be done under it. All of the cases now to be cited decide the general principle, and several of them are still more in point, as they deal with statutes the same or similar to the one now in question.

74 N. Y., 183.
23 Misc., 9.
111 U. S., 701.
182 U. S., 427 (Simon v. Craft).
34 App. Div., 363.
32 Mich., 1.
136 N. C., 415.
134 Cal., 626.
55 Minn., 467.
139 Fed., 846.
65 Me., 120.
14 Mass., 222.
131 N. Y., 546.
1 L. R. A. (N. S.), 540.

The above is from the Thaw case, which involved the right to hold an alleged insane criminal without a notice and hearing on the subject of his sanity.

"Tenth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in its finding that the plaintiff, Chaloner, deliberately failed to appear in the 1899 proceedings."

"Eleventh. That the learned United States Circuit Court of Appeals for the Second Circuit erred in finding that full opportunity was afforded to the plaintiff, Chaloner, to appear in the 1899 proceedings."

The plaintiff in error did not deliberately fail to appear in the 1899 proceedings, and full opportunity was not afforded him to appear therein. The alleged notice which was handed to him was, in law, no notice. (R. 100.) The court provided, in the order by which the Commission in Lunacy was created, that Mr. Chaloner should be given at least five days' notice before the proceedings. (R. 92.) The alleged notice bears date May 31, 1899, and, in some of the proceedings it is stated as May 23, which is erroneous. In the Record it is May 31. (R. 100.) The three commissioners signing the alleged notice were not sworn in until June 5, 1899. (R. 93.) The so-called notice was delivered to Mr. Chaloner on June 6, at 2 o'clock in the afternoon, as shown by the affidavit of the process-server, at Bloomingdale Asylum, at White Plains. It named the time of the hearing as June 12, 1899, at 4:00 o'clock p. m. There was, necessarily, a Sunday intervening. Mr. Chaloner was, and had been, sick in bed for three weeks, according to the testimony of Dr. Lyon, Superintendent of Bloomingdale. Allowing for the time necessary for a sick man to get ready and get out of his bed and cell, and go to the court house in New York City, and allow-

ing for the fact that one of the intervening days was Sunday, there were less than four clear days notice for Mr. Chaloner to attend that hearing on June 12th. If due care had been exercised to preserve his rights, the hearing would have been held at White Plains, practically at the door of the asylum, and the commissioners would have taken their oath promptly after May 31, the date of the Commission, and notice would have been served immediately upon Mr. Chaloner, instead of giving him a matter of only about four days' actual notice.

Counsel for defendant in error has stated that, in the passage of testimony quoted in the opinion of Judge Mayer,

> "It appears most plainly that he did not appear at the jury proceedings in 1899 because he did not wish to, and not because he was in any sense unable."

The portion of the deposition of the plaintiff in error referred to by counsel for the defendant in error, and by Judge Mayer, is set forth in full in the brief of plaintiff in error on pages 117 to 135; but the same justifies no such construction as that placed upon it by said counsel and said Judge.

We particularly request the court to read pages 132 to 135 of the brief of plaintiff in error, which contain the portion of the testimony most directly bearing upon this matter, but which wholly fails to bear the erroneous construction placed thereon by counsel for the defendant in error and the learned judge who delivered the opinion of the Circuit Court of Appeals.

We especially invite the attention of the court to that portion of the brief of plaintiff in error entitled: "Analysis of Mayer, J's., opinion in appeal of Chaloner

v. Sherman," pp. 80 to 138, of the brief of plaintiff in error, in which the evidence is fully reviewed, and in which it is shown that the conclusions drawn by Judge Mayer from the evidence are erroneous.

The original letter from plaintiff in error to Micajah Woods, referred to by Judge Mayer (R. p. 188), in the hand-writing of the plaintiff in error is on file in the Clerk's office of this Honorable Court at the present time, having been transmitted from the United States District Court for the purposes of the hearing of this case. A reference to the same will demonstrate that plaintiff in error was not insane when he wrote the same from Bloomingdale on July 30, 1897. *It is further to be noted that his statement made at that time, as to whether he would go before a jury, is no evidence of his physical condition or ability to go before a jury two years later, namely, in* 1899, *or of his intentions with reference to appearing before a jury in* 1899. A copy of said letter appears in the record on page 156.

> *"Thirteenth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that in regard to the failure to give the plaintiff, Chaloner, notice of the resignation of the committee, Butler, and the appointment of Sherman, as Committee, that there is no statutory requirement of notice in such a proceeding and that notice to the committee of a proposed removal is the only notice required.*
>
> *"Fourteenth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that if notice were required the failure to give it is an irregularity which must be dealt with by the State Court of original jurisdiction."*

The facts on this point were fully set forth in the opening statement of the case, and the law is set forth in the brief of the plaintiff in error. We add the following fuller quotations and additional references.

In *Matter of Andrews*, 192 N. Y., 515 (decided September, 1908), it was held:

Syllabi:

> While the Supreme Court has general jurisdiction over the persons and estates of incompetent persons, it has no power to remove the committee of such a person or appoint a successor thereto without the institution of a proceeding for the purpose, upon notice to the relatives and persons interested in the person and estate of the incompetent.
>
> *Code, Civil Procedure,* Sections 2339, 2343, 2323a, and 2325.
>
> Although the Code authorizing the removal or suspension of the committee of an incompetent person, in the discretion of the Court, contains no provision for notice to the person interested in the person and estate of the incompetent, nevertheless such committee cannot be removed and its successor appointed except as provided in Section 2342, which contemplates the institution of a proceeding for that purpose, upon notice to such persons as would be entitled to notice upon the appointment of such a committee under Sections 2323a and 2325.

The Court said:

> "We have recently had occasion to consider this

subject so fully in the case of Sporza vs. German Savings Bank, that any further discussion of the origin, development and explanation of the present jurisdiction of our Supreme Court over persons of unsound mind would involve only an unnecessary repetition. *It may be assumed that the jurisdiction is broad enough to render the order of removal or substitution without notice, such as was made in the present case, unassailable in a collateral proceeding.* Here, however, the regularity of the order is directly attacked from the appeal of the order itself, and we are called upon to decide whether steps which led up to that order were taken in the manner prescribed by law. * * * *If an incompetent person has been committed to a State institution and is an inmate thereof,* a committee cannot be appointed without personal notice of the presentation of the petition for appointment to such incompetent person, and also to the husband or wife, if any, or if none, to the next of kin named in the petition, and to the officer in charge of the institution of which such person is an inmate. (Sec. 2323a.)

"In all other cases the court must require notice of the presentation of the petition to be given to the husband or wife, etc., or to a certain specified public officer, unless sufficient reasons exist for dispensing with such notice, to be shown in the petition. Section 2325. These provisions of the statute manifest a legislative intent that notice shall be given if possible to the relatives of the alleged lunatic of an application to the court for the appointment of a committee."

"These provisions of the statute manifest the

legislative intent that notice shall be given, if possible, to the relatives of an alleged lunatic of an application to the court for the appointment of a committee. In the section of the Code, however, which provides that the committee may be suspended or removed in the discretion of the court, nothing is said about any notice of an application for removal or as to the necessity of any special proceeding for that purpose; and hence it seems to be inferred that no notice is requisite."

The Court pointed out that the subsequent provision in the statute indicates that inference to be incorrect.

"Here we have, as it seems to me, by the plainest implication a legislative declaration that even where the propriety of the removal of the committee of a lunatic is suggested by facts coming to the knowledge of the judge, either officially or otherwise, a special proceeding for such removal should be instituted before the committee is actually removed. Such a course of procedure clearly contemplates an application to the court in behalf of the incompetent person, of which notice shall be given to those interested in his person or property."

"'The present Constitution of the State, adopted in 1894,' continues the Supreme Court, 'with general jurisdiction in law and equity.' (Const. Art. VI, Sec. 1.) This preserves the jurisdiction over lunatics and their property which was originally vested in the chancellor and Court of Chancery and was subsequently transferred to

the old Supreme Court, as it existed prior to the adoption of the Constitution of 1846. That jurisdiction, however, as to the manner of its exercise may be regulated by the Legislature, *and where this has not been done, it is to be exercised according to the established practice of the courts in lunacy cases.*"

"I have not been able to find any reported cases in this State in which a committee has been removed by the chancellor or a judge acting sua sponte and without notice. Great confusion and conflict might arise if such orders could properly be made by the ninety-seven Supreme Court justices in this State, each one of whom may exercise the powers of a chancellor."

"The parties entitled to notice of a proceeding for the appointment of a committee should have notice of the proceeding for his removal contemplated by Section 2342."

In Matter of Cooper, 105 N. Y., 449, the Court said:

"In the selection of a committee of the person of an incompetent, the court should exercise the greatest care in order that the rights of all parties interested may be subserved. The welfare and happiness of the incompetent himself is the important consideration, but the wishes and interests of the relatives, if they coincide with the incompetent's welfare, should not be ignored."

This case arose on a petition for the determination of competency, and the jury found respondent insane.

When the question of appointment of a committee was considered, a dispute arose between the relatives and the attorney for the incompetent, who objected to the relatives' selection, and insisted that a trust company be appointed.

The court quoted and followed Matter of Lamoree, 32 Barb., 122, to the effect that when an incompetent's estate is large and valuable (especially where there is a dispute as to who shall be appointed committee), the matter should be referred to a referee to take testimony before the court orders the appointment of a committee.

> *"Fifteenth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the judgment of the New York Court was not a void judgment."*

This assignment of error has been fully covered in the discussion of the question of notice and the unconstitutionality of the statute.

> *"Sixteenth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the judgment of the New York Court must remain valid until reversed or set aside by the courts of New York.*
>
> *"Seventeenth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the judgment of the Supreme Court of New York remains today in full force and validity.*
>
> *"Eighteenth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that if the petitioner's sanity is established and even if some of the requirements*

of the statute had been omitted or neglected or insufficient evidence of insanity was adduced, relief must be obtained in the court which appointed the committee.

"Nineteenth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that this Federal Court has not jurisdiction to set aside or annul the judgment of the State Supreme Court."

All the phases of the case embraced in the assignments of error above quoted have been fully covered in the brief of the plaintiff in error; and any further discussion of the same would be surplusage.

The two cases referred to by Judge Mayer as holding the New York statute constitutional are worthy of especial attention, and we, therefore, treat the same as follows:

Sporza v. German Savings Bank, 192 N. Y., 8. (Apr. 7-08.)

On November 22, 1897, one Ida Jetter opened a savings account with defendant bank. July 20, 1902, she married Frank Sporza, and was subsequently committed to the Manhattan *State* Hospital at Ward's Island, under the name of Ida Jetta, "in the manner provided by the State Insanity Law," and was supported by the State. May 23, 1908, the Superintendent of the Asylum petitioned for the appointment of a committee, and the plaintiff was appointed and demanded payment by the defendant bank of $1,309.72, balance of her deposit. Payment was refused on the grounds (1) that the name was misspelled, and (2) that section 2323-a of the Code of Civil Procedure, under which commitment was had,

was in violation of the U. S. Constitution.

The court observed, at the outset, that the constitutional question was one of importance, "in view of the fact that it (the law) has been in force since 1895, and that several hundred appointments of committees have been made annually under it, and not only personal estate but title to real property has been passed thereby."

The opinion of the court contains an elaborate review of the decisions showing that, prior to the enactment of lunacy laws, the power and control over idiots and lunatics was inherent in courts of chancery, which courts, in order to satisfy themselves, took proper precaution to safeguard the interests of alleged incompetents by means of giving notice and trials by jury.

In 1842 a law was enacted providing for the establishment and maintenance of a State lunatic asylum, and provision was made for the commitment on certificate, under oaths of two physicians; and persons dissatisfied therewith were allowed three days' time in which to appeal to the Supreme Court, or some judge thereof, or to any judge of the county.

By Ch. 466 of the Laws of 1874 the insanity laws were revised. Provision was then made for the commitment to public and private asylums on the certificate of two physicians approved by the judge of the court; and the principal provisions of that act have been carried into the Act of 1896 "under which it is provided that * * * notice to the alleged insane person shall be given" unless such notice might prove injurious or dangerous, in which case the judge may dispense with notice, specifying his reasons therefor in the order. The judge is empowered to consider the certificate and the evidence, and, on demand of the insane person or relatives, to adjourn the hearing and afford them oppor-

tunity to be present and be heard. Provision is also made for appeal to the Supreme Court, which shall cause a jury to be summoned to try the issue "in the same manner as in the proceedings for the appointment of a committee."

In the opinion in the Sporza case it is stated that THE RECORDS FAIL TO DISCLOSE THE PROCEEDINGS HAD UPON THE COMMITMENT OF THE INCOMPETENT TO THE *STATE* HOSPITAL.

> "All we have is 'that the commitment was lawfully made in the manner provided by the insanity law.' We must assume that all the steps required by that statute were regularly taken, and that she was an inmate of the Manhattan *State* Hospital, duly committed according to law."
>
> "* * * Whether the incompetent in this case actually had a trial by jury and her insanity established WE ARE NOT ADVISED BY THE RECORD, for we have only the admission that she was lawfully committed in accordance with the provisions of the insanity law. This law, as we have seen, provides for a hearing upon notice, unless, for reasons stated, notice is dispensed with."

Reference was then had by the court to Trust Company of America v. State Safe Deposit Co., 187 N. Y., 178, in which it was stated:

> "Section 2323a of the Code was added to Title VI in 1895, together with another new section (2336a) to establish a scheme whereby steps might be taken at the instance of the officers hav-

ing charge of the various STATE hospitals for the insane to reimburse such institutions for their expenditures for the support of insane patients WHO HAD NO RELATIVES OR FRIENDS LIABLE OR WILLING TO CONTRIBUTE TO THEIR SUPPORT, and where the patients were the owners of property which ought to be used to defray such expenditures. In most of the cases contemplated by these sections, there would be an express adjudication of mental incompetency before the patient was committed to the institution, and, therefore, the section omits any provision for adjudication and empowers the court to appoint a committee, if satisfied of the truth of the facts required to be stated in the petition immediately and without taking any further proof.

* * * * * * * *

"As we have seen, this case is not one where the alleged incompetent has been confined by relatives in a private institution; but she has become a ward of the State, and is confined in a STATE hospital presided over by expert physicians WHO CAN HAVE NO MOTIVE FOR HER DETENTION other than that which is necessary for her benefit."

It was then pointed out that the right of trial by jury was provided by the statute; also that such right may be waived; that the proceeding for commitment was a civil one; that the RECORD SHOWED NO DEMAND HAVING BEEN MADE FOR A JURY TRIAL; and, on the record, it was *conceded* that the alleged incompetent had notice of the proceeding to appoint a committee.

WILLARD BARTLETT, J., wrote a separate opinion concurring in the conclusion reached in the majority opinion; and he said, in part:

> "My conclusion is that if Section 2323a of the Code is intended to apply to an incompetent person who has been committed to a STATE institution, without an inquisition in the usual manner, before a jury, or without a jury trial of the issue of incompetency in court, then it is unconstitutional. If, however, it may be considered as applying only to persons who have been adjudicated incompetent by the finding of a jury, and for whom no committee has as yet been appointed (by reason, for example, of no property having been discovered at the time of the inquisition), then it may be regarded as constitutional. I think it may be thus construed; *and hence, as it is not made to appear in the present case that the incompetency of Ida Sporza* had not been ascertained and declared upon an inquisition by a jury at Trial Term of the Supreme Court, it must be assumed that such was waived. Upon this assumption, the judgment below was right and must be affirmed."

It thus appears that Judge Mayer did not understand the case of Sporza v. German Savings Bank, supra, inasmuch as he cited it as a case holding that the Laws of 1896, Ch. 545, were constitutional, when, in fact, that case is a discussion of Section 2323a of Title VI of the Code of Civil Procedure—an entirely different statute. The original ex parte commitment of Mr. Chaloner in 1897 was made under said Chapter 545 of the Laws of 1896 (R., p. 11); but the 1899 proceedings were insti-

tuted and conducted under Title VI of the Code of Civil Procedure, and *not* under Section 2323a of that Title. Therefore, the Sporza case has absolutely no bearing upon the case now at the bar of this Honorable Court as an authority to sustain the wholly erroneous decision of the Circuit Court of Appeals for the Second Circuit, and the opinion of Judge Mayer.

Likewise, in Matter of Walker, 57 App. Div., 1, the court held the General Insanity Law (Ch. 545, Laws of 1896) to be constitutional, and also held Section 2323a of the Code of Civil Procedure to be constitutional; but such a holding does not support the remainder of the Title VI of the Code of Civil Procedure under which the orders in the 1899 and 1901 proceedings, attempting to appoint Prescott Hall Butler and Thomas T. Sherman, successively, were made.

Matter of Walker, 57 App. Div., 1.

SYLLABUS:

The insanity law is not unconstitutional as depriving an incompetent of liberty without "due process of law," nor is Sec. 2323-a, Code of Civil Procedure.

Sec. 2323-a, et seq., authorizing the appointment of a committee of an alleged incompetent person who has been committed to a state institution in any manner provided by law, to enable the State to secure reimbursement for his maintenance, without providing for a new investigation of his competency—its provisions are not unconstitutional in that they permit the alleged incompetent to be deprived of his liberty or property without "due process of law."

The court pointed out that the order appealed from was entered under Sections 2323-a, 2323-b and 2336-a.

Notice was served (of the proceedings for the appoint-

ment of a committee) upon the officer in charge of the institution in which the alleged incompetent was confined; upon the incompetent himself; and upon the wife.

The wife appeared by counsel; and the appellant appeared by counsel and alleged that his former or initial commitment of two years before was illegal on the ground that no notice had been served upon him.

The court, in its opinion, pointed out that the original papers in which the initial commitment proceedings had been had were not in the record on appeal; and that it would be assumed that the proceedings were regular, the constitutionality of the statute under which the commitment had been had having been upheld in a previous case—that it would be assumed that the requirements had been complied with in substance and form.

One other matter should be mentioned before this argument is closed, namely, the affidavit of Egerton L. Winthrop, Jr., dated June 22, 1899 (R. pp. 140-142), where, in asking an allowance for attorney's fees from the estate of Mr. Chaloner, he positively states that in December, 1897, his firm had been retained to represent John Armstrong Chaloner's family in proceedings for the appointment of a committee, and that, at that time, he (Winthrop) had been informed that *"the said John Armstrong 'Chanler' was contemplating proceedings for his release from Bloomingdale asylum where he had been duly committed as a person of unsound mind * * *."* This shows beyond doubt the desire and purpose of Mr. Chaloner's family to keep him in Bloomingdale; and, further, that the 1899 proceedings were instituted in furtherance of that purpose.

Respectfully submitted,

EDWARD F. COLLADAY,
SIDNEY J. DUDLEY.